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Legislative History – Montana Session Law

Chapter: 299

Session L: 1977

Bill Number: HB 763

Checklist of Bill History

History and Final Status Sheet



Introduced Bill



Fiscal Note



Third Reading Bill



Final Version of Bill



House

Committee: Judiciary

Hearing Date(s): 2/18/1977

Committee Report: 2/19/1977

Senate

Committee: Judiciary

Hearing Date(s): 3/15/1977

Committee Report: 3/16/1977

Conference Committee

Hearing Date(s):

Conference Committee Report:

Compiler Notes

Compiled by: SK Marshall

Date: 5/30/2025

Notes: Audio/Video recordings can be found at the Montana Historical Society

Thank you!

1 *House* BILL NO. *763*
 2 INTRODUCED BY *Ramirez Maly*
 3

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE
 5 ATTACHMENT LAW; PROVIDING FOR JUDICIAL SUPERVISION OF THE
 6 ISSUANCE OF A WRIT OF ATTACHMENT AND PROVIDING FOR
 7 PRESEIZURE NOTICE AND HEARING OR IN CERTAIN CASES FOR
 8 IMMEDIATE POSTSEIZURE HEARING; AMENDING SECTIONS 93-4301,
 9 93-4304, AND 93-6908, R.C.M. 1947; AND REPEALING SECTION
 10 93-4302, R.C.M. 1947."

11
 12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13 Section 1. Section 93-4301, R.C.M. 1947, is amended to
 14 read as follows:

15 "93-4301. When attachment may issue. (1) The A
 16 plaintiff, at the time of issuing the summons, or at any
 17 time afterward, may have the property of the defendant
 18 attached as security for the satisfaction of any judgment
 19 that may be recovered, ~~unless the defendant gives security~~
 20 ~~to pay such judgment, as in this chapter provided, as~~
 21 ~~follows:~~

22 (2) Property may be attached in: in

23 (a) an action upon a contract, express or implied, for
 24 the direct payment of money, where the contract;

25 (i) is not secured by any mortgage or lien upon real

1 property; i orv

2 (ii) If is originally secured, and such security has,
 3 without any act of the plaintiff, or the person to whom the
 4 security was given, becomes ~~become~~ valueless; and in

5 (b) an action based upon a statutory stockholders"
 6 liability.

7 (3) Attachment may not issue if the defendant gives
 8 security to pay the judgment."

9 Section 2. There is a new R.C.M. section numbered
 10 93-4302.1 that reads as follows:

11 93-4302.1. Affidavit required for attachment. When
 12 attachment of a defendant's property is sought, an affidavit
 13 must be made by the plaintiff or someone in his behalf
 14 stating:

15 (1) facts which show the defendant is indebted to the
 16 plaintiff in the manner specified in 93-4301(2);

17 (2) that the attachment is not sought to hinder,
 18 delay, or defraud any creditor of the defendant;

19 (3) facts creating a reasonable belief that the
 20 defendant is:

21 (a) leaving or about to leave this state taking with
 22 him property, money, or other effects which might be
 23 subjected to payment of the debt; or

24 (b) disposing or about to dispose of his property
 25 which would be subject to execution;

INTRODUCED BILL

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HB 763

1 (4) a particular description and the actual value of
2 the property to be attached.

3 Section 3. Section 93-4304, R.C.M. 1947, is amended to
4 read as follows:

5 "93-4304. Undertaking. ~~(1)~~ Before issuing the writ,
6 the clerk ~~court~~ must require a written undertaking on the
7 part of the plaintiff, with two ~~(2)~~ or more sufficient
8 sureties, to be approved by the clerk ~~court~~, in a sum not
9 less than double the amount claimed by the plaintiff, if
10 such amount be ~~one-thousand-dollars-(\$1,000)~~ or under, or,
11 in case the amount so claimed by plaintiff shall exceed ~~one~~
12 ~~thousand-dollars-(\$1,000)~~, then in a sum equal to such
13 amount, ~~but in~~ In no case shall an undertaking be required
14 exceeding in amount the sum of ~~twenty-thousand-dollars~~
15 ~~(\$20,000)~~. The condition of such undertaking shall be to the
16 effect that if the defendant recovered judgment, or if the
17 court ~~shall~~ finally decide decides that the plaintiff was
18 not entitled to an attachment, the plaintiff will pay all
19 costs that may be awarded to the defendant, and all damages
20 he may sustain by reason of the issuing out of the
21 attachment, not exceeding the sum specified in the
22 undertaking.

23 ~~(2)~~ At any time within ~~thirty--(30)~~ days after the
24 service of summons, the defendant may except to the
25 sufficiency of the sureties. If he fails to do so, he is

1 deemed to have waived all objections to them.

2 ~~(3)~~ When excepted to, the plaintiff's sureties, upon
3 notice to the defendant of not less than ~~two--(2)~~ days nor
4 more than ~~ten--(10)~~ days, must justify before a judge of the
5 district court, ~~or--before--the--clerk--thereof~~, and upon
6 failure to justify, or if others in their place fail to
7 justify, at the time and place appointed, the ~~clerk-or~~ judge
8 shall issue an order vacating the writ of attachment."

9 Section 4. There is a new R.C.M. section numbered
10 93-4304.1 that reads as follows:

11 93-4304.1. Writ -- when issued. A judge of a court
12 having jurisdiction of the cause may issue a writ of
13 attachment when:

14 (1) he has received the affidavit described in
15 93-4302.1;

16 (2) he has approved the undertaking required in
17 93-4304; and

18 (3) the party seeking attachment has made a prima
19 facie showing:

20 (a) of his right to possession and the necessity for
21 seizure at a show cause hearing before the court with at
22 least 3 days' notice to the defendant; if the defendant
23 cannot be found for personal service, notice shall be posted
24 on the property and in three public places in the county
25 where the property is located; or

(b) that the delay caused by notice and a hearing would seriously impair the remedy sought by the party seeking possession. Evidence of such impairment must be presented in open court and the court must set forth with specificity the reasons why such delay would seriously impair the remedy sought by the person seeking attachment.

Section 5. There is a new R.C.M. section numbered 93-4304.2 that reads as follows:

93-4304.2. Postseizure hearing. (1) When a writ has been issued upon the showing specified in 93-4304.1 (3)(b), the defendant may challenge the seizure of the property at a hearing before the court to be held within 3 days after the seizure. Notice shall be given the defendant as required in 93-4304.1 (3)(a).

(2) At such hearing the defendant may challenge the merit of the underlying action, the need for the prejudgment seizure of property, or both. The writ shall be quashed if the court makes a preliminary finding that:

(a) there is no question of fact to be resolved and that the plaintiff cannot establish the prima facie validity of his claim; or

(b) there is no need for the continued attachment of the defendant's property.

Section 6. Section 93-6908, R.C.M. 1947, is amended to read as follows:

"93-6908. Writ of attachment shall issue upon affidavit. A writ to attach the property of the defendant must be issued by the justice at the time of, or after issuing summons and before answer, on receiving an affidavit by or on behalf of the plaintiff, showing the same facts as are required to be shown by the affidavit specified in section-93-4302 ~~93-4302.1.~~"

Section 7. Repealer. Section 93-4302, R.C.M. 1947, is repealed.

-End-

Approved by Committee
on Judiciary

HOUSE BILL NO. 763

INTRODUCED BY RAMIREZ, MELOY

A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE ATTACHMENT LAW; PROVIDING FOR JUDICIAL SUPERVISION OF THE ISSUANCE OF A WRIT OF ATTACHMENT AND PROVIDING FOR PRESEIZURE NOTICE AND HEARING OR IN CERTAIN CASES FOR IMMEDIATE POSTSEIZURE HEARING; AMENDING SECTIONS 93-4301, 93-4304, AND 93-6908, R.C.M. 1947; AND REPEALING SECTION 93-4302, R.C.M. 1947."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 93-4301, R.C.M. 1947, is amended to read as follows:

"93-4301. When attachment may issue. (1) The A plaintiff, at the time of issuing the summons, or at any time afterward, may have the property of the defendant attached, as security for the satisfaction of any judgment that may be recovered, ~~unless the defendant gives security to pay such judgment as in this chapter provided as follows:~~

(2) Property may be attached in: in

(a) an action upon a contract, express or implied, for the direct payment of money, where the contract;

(i) is not secured by any mortgage or lien upon real

property; or

(ii) if is originally secured, and such security has, without any act of the plaintiff, or the person to whom the security was given, becomes become valueless; and in (b) an action based upon a statutory stockholders' liability.

(3) Attachment may not issue if the defendant gives security to pay the judgment."

Section 2. There is a new R.C.M. section numbered 93-4302.1 that reads as follows:

93-4302.1. Affidavit required for attachment. When attachment of a defendant's property is sought, an affidavit must be made by the plaintiff or someone in his behalf stating:

(1) facts which show the defendant is indebted to the plaintiff in the manner specified in 93-4301(2);

(2) that the attachment is not sought to hinder, delay, or defraud any creditor of the defendant;

(3) facts creating a reasonable belief that the defendant is:

(a) leaving or about to leave this state taking with him property, money, or other effects which might be subjected to payment of the debt; or

(b) disposing or about to dispose of his property which would be subject to execution;

SECOND READING

(4) a particular description and the actual value of the property to be attached.

Section 3. Section 93-4304, R.C.M. 1947, is amended to read as follows:

"93-4304. Undertaking. (1) Before issuing the writ, the clerk court must require a written undertaking on the part of the plaintiff, with two (2) or more sufficient sureties to be approved by the clerk court, in a sum not less than double the amount claimed by the plaintiff, if such amount be one-thousand-dollars-(\$1,000) or under, or, in case the amount so claimed by plaintiff shall exceed one thousand--dollars--(\$1,000), then in a sum equal to such amount, but in no case shall an undertaking be required exceeding in amount the sum of twenty-thousand-dollars (\$20,000). The condition of such undertaking shall be to the effect that if the defendant recovered judgment, or if the court shall finally decide decides that the plaintiff was not entitled to an attachment, the plaintiff will pay all costs that may be awarded to the defendant, and all damages he may sustain by reason of the issuing out of the attachment, not exceeding the sum specified in the undertaking.

(2) At any time within thirty--(30) days after the service of summons, the defendant may except to the sufficiency of the sureties. If he fails to do so, he is

deemed to have waived all objections to them.

(3) When excepted to, the plaintiff's sureties, upon notice to the defendant of not less than two--(2) days nor more than ten--(10) days, must justify before a judge of the district court, or--before--the--clerk--thereof and upon failure to justify, or if others in their place fail to justify, at the time and place appointed, the clerk-or judge shall issue an order vacating the writ of attachment."

Section 4. There is a new R.C.M. section numbered 93-4304.1 that reads as follows:

93-4304.1. Writ -- when issued. A judge of a court having jurisdiction of the cause may issue a writ of attachment when:

(1) he has received the affidavit described in 93-4302.1;

(2) he has approved the undertaking required in 93-4304; and

(3) the party seeking attachment has made a prima facie showing:

(a) of his right to possession and the necessity for seizure at a show cause hearing before the court with at least 3 days' notice to the defendant; if the defendant cannot be found for personal service, notice shall be posted on the property and in three public places in the county where the property is located; or

1 (b) that the delay caused by notice and a hearing
2 would seriously impair the remedy sought by the party
3 seeking possession. Evidence of such impairment must be
4 presented in open court and the court must set forth with
5 specificity the reasons why such delay would seriously
6 impair the remedy sought by the person seeking attachment.

7 Section 5. There is a new R.C.M. section numbered
8 93-4304.2 that reads as follows:

9 93-4304.2. Postseizure hearing. (1) When a writ has
10 been issued upon the showing specified in 93-4304.1 (3)(b),
11 the defendant may challenge the seizure of the property at a
12 hearing before the court to be held within 3 days after the
13 seizure. ~~Notice shall be given the defendant as required in~~
14 ~~93-4304.1--(3)(e) OF THE RIGHT TO A POST-SEIZURE HEARING~~
15 ~~SHALL BE SERVED PERSONALLY ON THE DEFENDANT, OR IF THE~~
16 ~~DEFENDANT CANNOT BE FOUND FOR PERSONAL SERVICE, NOTICE SHALL~~
17 ~~BE POSTED ON THE PROPERTY AND IN THREE PUBLIC PLACES IN THE~~
18 ~~COUNTY WHERE THE PROPERTY IS LOCATED.~~

19 (2) At such hearing the defendant may challenge the
20 merit of the underlying action, the need for the prejudgment
21 seizure of property, or both. The writ shall be quashed if
22 the court makes a preliminary finding that:

23 (a) there is no question of fact to be resolved and
24 that the plaintiff cannot establish the prima facie validity
25 of his claim; or

1 (b) there is no need for the continued attachment of
2 the defendant's property.

3 Section 6. Section 93-6908, R.C.M. 1947, is amended to
4 read as follows:

5 "93-6908. Writ of attachment shall issue upon
6 affidavit. A writ to attach the property of the defendant
7 must be issued by the justice at the time of, or after
8 issuing summons and before answer, on receiving an affidavit
9 by or on behalf of the plaintiff, showing the same facts as
10 are required to be shown by the affidavit specified in
11 ~~section 93-4302~~ 93-4302.1."

12 Section 7. Repealer. Section 93-4302, R.C.M. 1947, is
13 repealed.

-End-

HOUSE BILL NO. 763

INTRODUCED BY RAMIREZ, MELOY

A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE ATTACHMENT LAW; PROVIDING FOR JUDICIAL SUPERVISION OF THE ISSUANCE OF A WRIT OF ATTACHMENT AND PROVIDING FOR PRESEIZURE NOTICE AND HEARING OR IN CERTAIN CASES FOR IMMEDIATE POSTSEIZURE HEARING; AMENDING SECTIONS 93-4301, 93-4304, AND 93-6908, R.C.M. 1947; AND REPEALING SECTION 93-4302, R.C.M. 1947."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 93-4301, R.C.M. 1947, is amended to read as follows:

"93-4301. When attachment may issue. (1) The A plaintiff, at the time of issuing the summons, or at any time afterward, may have the property of the defendant attached, as security for the satisfaction of any judgment that may be recovered, ~~unless the defendant gives security to pay such judgments as in this chapter provided as follows:~~

(2) Property may be attached in: in

(a) an action upon a contract, express or implied, for the direct payment of money, where the contract;

(i) is not secured by any mortgage or lien upon real

property; or

(ii) if is originally secured, and such security has, without any act of the plaintiff, or the person to whom the security was given, becomes ~~become~~ valueless; and in

(b) an action based upon a statutory stockholders' liability.

(3) Attachment may not issue if the defendant gives security to pay the judgment."

Section 2. There is a new R.C.M. section numbered 93-4302.1 that reads as follows:

93-4302.1. Affidavit required for attachment. When attachment of a defendant's property is sought, an affidavit must be made by the plaintiff or someone in his behalf stating:

(1) facts which show the defendant is indebted to the plaintiff in the manner specified in 93-4301(2);

(2) that the attachment is not sought to hinder, delay, or defraud any creditor of the defendant;

(3) facts creating a reasonable belief that the defendant is:

(a) leaving or about to leave this state taking with him property, money, or other effects which might be subjected to payment of the debt; or

(b) disposing or about to dispose of his property which would be subject to execution;

THIRD READING

1 (4) a particular description and the actual value of
2 the property to be attached.

3 Section 3. Section 93-4304, R.C.M. 1947, is amended to
4 read as follows:

5 "93-4304. Undertaking. ~~(1)~~ Before issuing the writ,
6 the ~~clerk~~ court must require a written undertaking on the
7 part of the plaintiff, with two ~~(2)~~ or more sufficient
8 sureties, to be approved by the ~~clerk~~ court, in a sum not
9 less than double the amount claimed by the plaintiff, if
10 such amount be ~~one-thousand-dollars-(\$1,000)~~ or under, or,
11 in case the amount so claimed by plaintiff shall exceed ~~one~~
12 ~~thousand-dollars-(\$1,000)~~, then in a sum equal to such
13 ~~amount,~~ but in ~~in~~ no case shall an undertaking be required
14 exceeding in amount the sum of ~~twenty-thousand-dollars~~
15 ~~(\$20,000)~~. The condition of such undertaking shall be to the
16 effect that if the defendant recovered judgment, or if the
17 court ~~shall~~ finally ~~decide~~ decides that the plaintiff was
18 not entitled to an attachment, the plaintiff will pay all
19 costs that may be awarded to the defendant, and all damages
20 he may sustain by reason of the issuing ~~out~~ of the
21 attachment, not exceeding the sum specified in the
22 undertaking.

23 ~~(2)~~ At any time within ~~thirty-(30)~~ days after the
24 service of summons, the defendant may except to the
25 sufficiency of the sureties. If he fails to do so, he is

1 deemed to have waived all objections to them.

2 ~~(3)~~ When excepted to, the plaintiff's sureties, upon
3 notice to the defendant of not less than ~~two-(2)~~ days nor
4 more than ~~ten-(10)~~ days, must justify before a judge of the
5 district court, ~~or-before-the-clerk-thereof,~~ and upon
6 failure to justify, or if others in their place fail to
7 justify, at the time and place appointed, the ~~clerk-or~~ judge
8 shall issue an order vacating the writ of attachment."

9 Section 4. There is a new R.C.M. section numbered
10 93-4304.1 that reads as follows:

11 93-4304.1. Writ -- when issued. A judge of a court
12 having jurisdiction of the cause may issue a writ of
13 attachment when:

14 (1) he has received the affidavit described in
15 93-4302.1;

16 (2) he has approved the undertaking required in
17 93-4304; and

18 (3) the party seeking attachment has made a prima
19 facie showing:

20 (a) of his right to possession and the necessity for
21 seizure at a show cause hearing before the court with at
22 least 3 days' notice to the defendant; if the defendant
23 cannot be found for personal service, notice shall be posted
24 on the property and in three public places in the county
25 where the property is located; or

1 (b) that the delay caused by notice and a hearing
 2 would seriously impair the remedy sought by the party
 3 seeking possession. Evidence of such impairment must be
 4 presented in open court and the court must set forth with
 5 specificity the reasons why such delay would seriously
 6 impair the remedy sought by the person seeking attachment.

7 Section 5. There is a new R.C.M. section numbered
 8 93-4304.2 that reads as follows:

9 93-4304.2. Postseizure hearing. (1) When a writ has
 10 been issued upon the showing specified in 93-4304.1 (3)(b),
 11 the defendant may challenge the seizure of the property at a
 12 hearing before the court to be held within 3 days after the
 13 seizure. Notice ~~shall be given the defendant as required in~~
 14 ~~93-4304.1--(3)(b)~~ OF THE RIGHT TO A POST-SEIZURE HEARING
 15 SHALL BE SERVED PERSONALLY ON THE DEFENDANT, OR IF THE
 16 DEFENDANT CANNOT BE FOUND FOR PERSONAL SERVICE, NOTICE SHALL
 17 BE POSTED ON THE PROPERTY AND IN THREE PUBLIC PLACES IN THE
 18 COUNTY WHERE THE PROPERTY IS LOCATED.

19 (2) At such hearing the defendant may challenge the
 20 merit of the underlying action, the need for the prejudgment
 21 seizure of property, or both. The writ shall be quashed if
 22 the court makes a preliminary finding that:

23 (a) there is no question of fact to be resolved and
 24 that the plaintiff cannot establish the prima facie validity
 25 of his claim; or

1 (b) there is no need for the continued attachment of
 2 the defendant's property.

3 Section 6. Section 93-6908, R.C.M. 1947, is amended to
 4 read as follows:

5 "93-6908. Writ of attachment shall issue upon
 6 affidavit. A writ to attach the property of the defendant
 7 must be issued by the justice at the time of, or after
 8 issuing summons and before answer, on receiving an affidavit
 9 by or on behalf of the plaintiff, showing the same facts as
 10 are required to be shown by the affidavit specified in
 11 ~~section-93-4302~~ 93-4302.1."

12 Section 7. Repealer. Section 93-4302, R.C.M. 1947, is
 13 repealed.

-End-

March 16, 1977

STANDING COMMITTEE REPORT
Senate Committee on Judiciary

That House Bill No. 763 be amended as follows:

1. Amend page 2, section 2, line 20.
Following: "defendant"
Strike: "is"
2. Amend page 2, section 2, line 21.
Following: "(a)"
Insert: "is"
3. Amend page 2, section 2, line 23.
Following: "debt;"
Strike: "or"
4. Amend page 2, section 2, line 24.
Following: "(b)"
Insert: "is"
5. Amend page 2, section 2, line 25.
Following: line 25
Insert: "(c) has the power to dispose of or conceal or remove
from the state property which would be subject to execution; or
(d) is likely to suffer liens or encumbrances on his property
which would be subject to execution;"
6. Amend page 3, section 3, line 16.
Following: "defendant"
Strike: "recovered"
Insert: "recovers"
7. Amend page 4, section 4, line 20.
Following: "(a)"
Insert: "in the case of real property, of his right to attachment
and the necessity for seizure;
(b) in the case of personal property:
(i)"
8. Amend page 4, section 4, line 20.
Following: "to"
Strike: "possession"
Insert: "attachment"
9. Amend page 5, section 4, line 1.
Following: line 25 on page 4
Strike: "(b)"
Insert: "(ii) of his right to attachment and the necessity for seizure
and"

10. Amend page 5, section 5, line 10.

Following: "issued"

Insert: "upon real property or"

Following: "(b)"

Insert: "(ii)"

11. Amend page 5, section 5, line 23.

Following: "(a)"

Strike: "there is no question of fact to be resolved and that"

12. Amend page 6, section 5, line 1.

Following: "(b)"

Strike: "there is no"

Insert: "the plaintiff cannot establish by a preponderance of the evidence the"

13. Amend page 6, section 6, line 5.

Following: "attachment"

Strike: "shall"

Insert: "may"

14. Amend page 6, section 6, line 7.

Following: line 6

Strike: "must"

Insert: "may"

HOUSE BILL NO. 763

INTRODUCED BY RAMIREZ, MELOY

A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE ATTACHMENT LAW; PROVIDING FOR JUDICIAL SUPERVISION OF THE ISSUANCE OF A WRIT OF ATTACHMENT AND PROVIDING FOR PRESEIZURE NOTICE AND HEARING OR IN CERTAIN CASES FOR IMMEDIATE POSTSEIZURE HEARING; AMENDING SECTIONS 93-4301, 93-4304, AND 93-6908, R.C.M. 1947; AND REPEALING SECTION 93-4302, R.C.M. 1947."

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(2) Property may be attached in:

(a) an action upon a contract, express or implied, for the direct payment of money, where the contract:

(i) is not secured by any mortgage or lien upon real

property; or

(ii) if is originally secured, and such security has, without any act of the plaintiff, or the person to whom the security was given, becomes ~~become~~ valueless; and in (b) an action based upon a statutory stockholders' liability.

(3) Attachment may not issue if the defendant gives security to pay the judgment."

Section 2. There is a new R.C.M. section numbered 93-4302.1 that reads as follows:

93-4302.1. Affidavit required for attachment. When attachment of a defendant's property is sought, an affidavit must be made by the plaintiff or someone in his behalf stating:

(1) facts which show the defendant is indebted to the plaintiff in the manner specified in 93-4301(2);

(2) that the attachment is not sought to hinder, delay, or defraud any creditor of the defendant;

(3) facts creating a reasonable belief that the defendant is:

(a) Is leaving or about to leave this state taking with him property, money, or other effects which might be subjected to payment of the debt; or

(b) Is disposing or about to dispose of his property which would be subject to execution;

1 ~~(C) HAS THE POWER TO DISPOSE OF OR CONCEAL OR REMOVE~~
 2 ~~FROM THE STATE PROPERTY WHICH WOULD BE SUBJECT TO EXECUTION;~~
 3 OR

4 ~~(D) IS LIKELY TO SUFFER LIENS OR ENCUMBRANCES ON HIS~~
 5 ~~PROPERTY WHICH WOULD BE SUBJECT TO EXECUTION;~~

6 (4) a particular description and the actual value of
 7 the property to be attached.

8 Section 3. Section 93-4304, R.C.M. 1947, is amended to
 9 read as follows:

10 "93-4304. Undertaking. (1) Before issuing the writ,
 11 the clerk ~~court~~ must require a written undertaking on the
 12 part of the plaintiff, with two ~~(2)~~ or more sufficient
 13 sureties, to be approved by the clerk ~~court~~, in a sum not
 14 less than double the amount claimed by the plaintiff, if
 15 such amount be ~~one-thousand-dollars-(\$1,000)~~ or under, or,
 16 in case the amount so claimed by plaintiff shall exceed ~~one~~
 17 ~~thousand--dollars--(\$1,000)~~, then in a sum equal to such
 18 amount, ~~but in no case shall an undertaking be required~~
 19 ~~exceeding in amount the sum of twenty-thousand-dollars~~
 20 ~~(\$20,000).~~ The condition of such undertaking shall be to the
 21 effect that if the defendant ~~recovered~~ RECOVERS judgment, or
 22 if the court ~~shall finally decide~~ decides that the plaintiff
 23 was not entitled to an attachment, the plaintiff will pay
 24 all costs that may be awarded to the defendant, and all
 25 damages he may sustain by reason of the issuing out of the

1 attachment, not exceeding the sum specified in the
 2 undertaking.

3 (2) At any time within ~~thirty--(30)~~ days after the
 4 service of summons, the defendant may except to the
 5 sufficiency of the sureties. If he fails to do so, he is
 6 deemed to have waived all objections to them.

7 (3) When excepted to, the plaintiff's sureties, upon
 8 notice to the defendant of not less than ~~two--(2)~~ days nor
 9 more than ~~ten--(10)~~ days, must justify before a judge of the
 10 district court, ~~or--before--the--clerk--thereof~~, and upon
 11 failure to justify, or if others in their place fail to
 12 justify, at the time and place appointed, the ~~clerk--or~~ judge
 13 shall issue an order vacating the writ of attachment."

14 Section 4. There is a new R.C.M. section numbered
 15 93-4304.1 that reads as follows:

16 93-4304.1. Writ -- when issued. A judge of a court
 17 having jurisdiction of the cause may issue a writ of
 18 attachment when:

19 (1) he has received the affidavit described in
 20 93-4302.1;

21 (2) he has approved the undertaking required in
 22 93-4304; and

23 (3) the party seeking attachment has made a prima
 24 facie showing:

25 (a) IN THE CASE OF REAL PROPERTY, OF HIS RIGHT TO

1 ATTACHMENT AND THE NECESSITY FOR SEIZURE:2 (E) IN THE CASE OF PERSONAL PROPERTY:

3 (II) of his right to possession ATTACHMENT and the
 4 necessity for seizure at a show cause hearing before the
 5 court with at least 3 days' notice to the defendant; if the
 6 defendant cannot be found for personal service, notice shall
 7 be posted on the property and in three public places in the
 8 county where the property is located; or

9 ~~(b)(III) OF HIS RIGHT TO ATTACHMENT AND THE NECESSITY~~
 10 FOR SEIZURE AND that the delay caused by notice and a
 11 hearing would seriously impair the remedy sought by the
 12 party seeking possession. Evidence of such impairment must
 13 be presented in open court and the court must set forth with
 14 specificity the reasons why such delay would seriously
 15 impair the remedy sought by the person seeking attachment.

16 Section 5. There is a new R.C.M. section numbered
 17 93-4304.2 that reads as follows:

18 93-4304.2. Postseizure hearing. (1) When a writ has
 19 been issued UPON REAL PROPERTY OR upon the showing specified
 20 in 93-4304.1 (3)(b)(III), the defendant may challenge the
 21 seizure of the property at a hearing before the court to be
 22 held within 3 days after the seizure. Notice ~~shall be given~~
 23 ~~the defendant as required in 93-4304.1 (3)(a) OF THE RIGHT~~
 24 TO A POSTSEIZURE HEARING SHALL BE SERVED PERSONALLY ON THE
 25 DEFENDANT, OR IF THE DEFENDANT CANNOT BE FOUND FOR PERSONAL

1 SERVICE, NOTICE SHALL BE POSTED ON THE PROPERTY AND IN THREE
 2 PUBLIC PLACES IN THE COUNTY WHERE THE PROPERTY IS LOCATED.

3 (2) At such hearing the defendant may challenge the
 4 merit of the underlying action, the need for the prejudgment
 5 seizure of property, or both. The writ shall be quashed if
 6 the court makes a preliminary finding that:

7 (a) ~~there is no question of fact to be resolved and~~
 8 ~~that~~ the plaintiff cannot establish the prima facie validity
 9 of his claim; or

10 (b) ~~there is no~~ THE PLAINTIFF CANNOT ESTABLISH BY A
 11 PREPONDERANCE OF THE EVIDENCE THE need for the continued
 12 attachment of the defendant's property.

13 Section 6. Section 93-6908, R.C.M. 1947, is amended to
 14 read as follows:

15 "93-6908. Writ of attachment ~~shall~~ MAY issue upon
 16 affidavit. A writ to attach the property of the defendant
 17 ~~must~~ MAY be issued by the justice at the time of, or after
 18 issuing summons and before answer, on receiving an affidavit
 19 by or on behalf of the plaintiff, showing the same facts as
 20 are required to be shown by the affidavit specified in
 21 ~~section 93-4302 93-4302.1."~~

22 Section 7. Repealer. Section 93-4302, R.C.M. 1947, is
 23 repealed.

-End-

House Page No. 330, 693, 753, 772, **809**, 1446, 1474, 1489, 1508, 1641, 1642, 1643, 1647, 1649, **1652**, 1665.

Senate Page No. 614, 623, 1091, 1126, 1128, 1129, 1260, 1262, 1266, **1444**, 1445, 1446, 1448, 1449, **1450**, 1462.

- 763 Introduced by Ramirez, Meloy: A bill for an act entitled: "An act to revise the attachment law; providing for judicial supervision of the issuance of a writ of attachment and providing for preseizure notice and hearing or in certain cases for immediate postseizure hearing; amending Sections 93-4301, 93-4304, and 93-6908, R.C.M. 1947; and repealing Section 93-4302, R.C.M. 1947."

House Page No. 330, 623, 672, 716, 749, 792, **816**, 1055, 1098, 1113, 1143, 1144, 1151, 1170, 1228, 1321.

Senate Page No. 597, 600, 723, 777, **809**, 867, 966, 969.

- 764 Introduced by Ramirez, Sivertsen: A bill for an act entitled: "An act to generally revise the laws relating to auction sales; renumbering and amending Sections 66-201 through 66-203, 66-203.1, 66-204 through 66-207, 66-211, 66-213, 66-216, 66-219, and 66-230, R.C.M. 1947; amending Section 87A-2-328, R.C.M. 1947; and repealing Sections 66-208, 66-209, 66-210, 66-212, 66-214, 66-215, 66-217, 66-218, and 66-220 through 66-229, R.C.M. 1947."

House Page No. 330, 446, 479, 612, 615, 639, **678**, 1137, 1160, 1170, 1201, 1211, 1299.

Senate Page No. 536, 557, 792, 826, **875**, 929, 933.

- 765 Introduced by Driscoll: A bill for an act entitled: "An act to generally revise the laws relating to the Teachers' Retirement System and to ensure favorable advance determination from the United States Internal Revenue Service with respect to qualified tax status; amending Sections 75-6201, 75-6205, 75-6206, 75-6207, 75-6208, 75-6209, 75-6212, 75-6214, and 75-6216, R.C.M. 1947; and providing an immediate effective date."

House Page No. 330, 462, 555, 656, 728, **742**, 1272, 1315, 1317, 1318, 1327, 1383.

Senate Page No. 556, 558, 914, 945, **1003**, 1062, 1073.

- 766 Introduced by Holmes, Dussault, Waldron, Roth, McLane, Cox, Bradley, O'Connell, Estenson, Bengston, Halvorson, Curtiss, Huennekens, Regan, Metcalf, Meloy: A bill for an act entitled: "An act to appropriate money to the Community Services Bureau of the Department of Institutions for the care of female prisoners."

House Page No. 331, 1230, **1266**.

- 767 Introduced by Vincent, (By Request): A bill for an act entitled: "An act to amend the Interlocal Co-operation Act to provide for

Senate Bill No. 227, introduced by Story, et al

Senate Bill No. 250, introduced by Hazelbaker (by request)

Senate Bill No. 254, introduced by Roberts (by request)

Senate Bill No. 265, introduced by Lowe, et al

Senate Bill No. 316, introduced by McOmber, Etchart, Boylan

MOTIONS

Meloy moved that HB 292 be rereferred from Printing to the Committee on Natural Resources. Motion carried.

Meloy moved that the rules be suspended for the purpose of introducing a bill regarding corporations requested by the Attorney General. Motion carried.

Meloy moved that the rules be suspended for the purpose of introducing a bill regarding local government taxation requested by the Department of Revenue. Motion carried.

W. Baeth moved that HB 373 be rereferred from the Committee on Highways and Transportation to the Committee on Rules. Motion carried.

Kimble moved that HB 686 be rereferred from the Committee on Labor and Employment Relations to the Committee on State Administration. Motion carried.

Waldron moved that the House reconsider its action of the previous Legislative Day in failing to pass HB 519 on Second Reading. Motion carried.

FIRST READING AND COMMITMENT OF BILLS AND RESOLUTIONS

The following bills were accepted for introduction on the 18th Legislative Day, read first time and referred to committees:

HB 756, introduced by Frates, Holmes, E. Gunderson, Cox, McLane, Metcalf, Waldron. Referred to Committee on Public Health, Welfare and Safety.

HB 757, introduced by the Committee on Taxation; Lien, Smith. Referred to Committee on Taxation.

HB 758, introduced by South, Ramirez. Referred to Committee on Judiciary.

HB 759, introduced by Subcommittee on Montana Water; Day, Chairman, (By Request of the Department of Natural Resources and Conservation). Referred to Judiciary Subcommittee on Montana Water.

HB 760, introduced by Ellison, Cox. Referred to Committee on Business and Industry.

HB 761, introduced by Harrington, Kimble, Ramirez. Referred to Committee on Judiciary.

HB 762, introduced by Bradley, South. Referred to Committee on Natural Resources.

HB 763, introduced by Ramirez, Meloy. Referred to Committee on Judiciary.

HB 764, introduced by Ramirez, Sivertsen. Referred to Committee on Business and Industry.

HB 765, introduced by Driscoll. Referred to Committee on State Administration.

(Material in parentheses denotes cancelled type.)

And as amended, do pass. Report adopted.

HB 334, introduced bill, be amended as follows:

2/22/77

1. Amend page 2.

Following: line 7

Insert: "Section 4. Permissive delivery of statement. A copy of the statement setting forth the nature and amount of damages being sought may be delivered to the defendant at the time of service of the summons and complaint, but may not be filed for 20 days after the complaint is filed."

And as amended, do pass. Report adopted.

HB 466, do not pass.

2/22/77

HB 672, introduced bill, be amended as follows:

2/21/77

1. Amend title, line 7.

Following: line 6

Strike: "three"

Insert: "certain"

Following: "and"

Insert: "certain"

2. Amend page 4, section 1, subsection (5), line 8.

Following: "(1)(d)"

Insert: "upon a second conviction, one of which is an offense against the person listed in chapter 5 of Title 94,"

3. Amend page 5, section 2, subsection (c), line 14.

Following: line 14

Insert: "one of which is an offense against the person listed in chapter 5 of Title 94 and"

4. Amend page 5, section 2, subsection (d), line 19.

Following: "who,"

Insert: "under sentence for a term of imprisonment in excess of 1 year,"

5. Amend page 5, section 2, subsection (d), line 22.

Following: "imposed"

Insert: ", if the offense resulting in the sentence paroled from or the offense committed while on parole is one against the person listed in chapter 5 of Title 94"

And as amended, do pass. Report adopted.

HB 705, do not pass.

2/22/77

HB 763, introduced bill, be amended as follows:

2/22/77

1. Amend page 5, section 5, lines 13 and 14.

Following: "Notice"

Strike: "shall be given the defendant as required in 93-4304.1(3)(a)"

Insert: "of the right to a post-seizure hearing shall be served personally on the defendant, or if the defendant cannot be found for personal service, notice shall be posted on the property and in three public places in the county where the property is located"

And as amended, do pass. Report adopted.

On motion by Scully, and in accordance with the 24-hour rule, the adverse committee report on HB 778 was adopted by the following vote:

Ayes: W. Baeth, Bardanouve, Barrett, Bengtson, Bertelsen, Bradley Colburn, Conroy, Cox, Curtiss, Dassinger, Davis, Day, Dussault, Ellis Ellison, Ernst, Estenson, Eudaily, Fabrega, Fagg, Fedas, Frates, Gerke Gilligan, Gould, E. Gunderson, J. Gunderson, Halvorson, Hand, Hansen Harrington, Hirsch, Huennekens, Hurwitz, Jensen, Kanduch, Kennerly Kenny, Keyser, Kropp, Kvaalen, Lien, Lory, Lund, Lynch, McLane Manuel, Marks, Meloy, Metcalf, Meyer, Mular, Nathe, O'Connell O'Keefe, Pistoria, Porter, Quilici, Ramirez, Robbins, Roth, Ryan, Scully Seifert, Severson, Shelden, Sivertsen, Smith, South, Staigmillier, Stobie Teague, Tower, Tropila, Turner, Uhde, Underdal, Vincent, Vinger Williams, Wood, Wyrick, Mr. Speaker.

Total 84

Noes: R. Baeth, Brand, Cooney, Harper, Holmes, Johnston, Kessler Palmer.

Total 8

Excused: Ellerd, Menahan, Moore.

Total 3

Absent or not voting: Aageson, Burnett, Courtney, Kimble, Waldron.

Total 5

BILLS (Quilici, Chairman):

2/24/77

Correctly printed - HB 77, HB 181, HB 457, HB 558, HB 564
HB 588, HB 622, HB 640, HB 672, HB 687, HB 763, HB 788
HB 791, HB 805, HB 809, HJR 15, HJR 28, HJR 63, HJR 73
HJR 77, HJR 78, HJR 83, HJR 85.

Considered correctly engrossed - HB 363, HB 395, HB 430, HB 447
HB 455, HB 497, HB 533, HB 544, HB 714, HB 726, HB 741
HB 742, HB 758, HB 759, HB 769, HJR 55.

Correctly engrossed - HB 151, HB 352, HB 719, HB 728, HJR 65.

MESSAGES FROM THE OTHER HOUSE

Bills passed by the Senate and transmitted to the House
for concurrence:

2/23/77

Senate Bill No. 33, introduced by Blaylock

Senate Bill No. 234, introduced by Lee (by request)

Senate Bill No. 252, introduced by Turnage

Senate Bill No. 280, introduced by R. Smith, Regan, et al

Senate Bill No. 288, introduced by Turnage (by request)

Senate Bill No. 289, introduced by E. Smith, Hazelbaker (by request)

Senate Bill No. 291, introduced by Nelson (by request)

Senate Bill No. 293, introduced by Nelson (by request)

Senate Bill No. 294, introduced by Nelson (by request)

Senate Bill No. 328, introduced by Roskie, Goodover

Senate Bill No. 345, introduced by Lowe, Mathers, et al

Senate Bill No. 361, introduced by Devine (by request)

Noes: Barrett, Burnett, Colburn, Conroy, Curtiss, Davis, Ellerd, Ellison, Fabrega, Feda, Hand, Hansen, Johnston, Kenny, Keyser, McLane, Manuel, Marks, Meyer, Mular, Ramirez, Seifert, Severson, Sivertsen, Smith, Staigmiller, Teague, Turner, Vinger, Waldron, Wood, Wyrick.
Total 32

Excused: Moore.
Total 1

Absent or not voting: Aageson, J. Gunderson, Hurwitz, Tower.
Total 4

On motion by Lien, and in accordance with the 24-hour rule, the adverse committee report on HB 775 was adopted by the following vote:

Ayes: R. Baeth, W. Baeth, Bardanouve, Bertelsen, Bradley, Burnett, Conroy, Cooney, Courtney, Cox, Curtiss, Dassinger, Davis, Day, Dussault, Ellerd, Ellis, Ellison, Ernst, Estenson, Eudaily, Fabrega, Fagg, Feda, Frates, Gerke, Gilligan, Gould, E. Gunderson, Halvorson, Hand, Harper, Harrington, Hirsch, Holmes, Huennekens, Jensen, Johnston, Kanduch, Kessler, Keyser, Kropp, Kvaalen, Lien, Lory, Lund, McLane, Manuel, Marks, Meloy, Menahan, Metcalf, Meyer, Nathe, O'Keefe, Pistoria, Porter, Ramirez, Robbins, Roth, Scully, Seifert, Severson, Shelden, Sivertsen, Smith, South, Staigmiller, Tower, Tropila, Turner, Uhde, Underdal, Vincent, Vinger, Waldron, Williams, Wyrick, Mr. Speaker.
Total 79

Noes: Barrett, Brand, Colburn, Hansen, Kennerly, Kenny, Kimble, Lynch, Mular, O'Connell, Palmer, Quilici, Ryan, Stobie, Teague, Wood.
Total 16

Excused: Moore.
Total 1

Absent or not voting: Aageson, Bengtson, J. Gunderson, Hurwitz.
Total 4

Objection raised by Burnett on 2/24/77 on adverse committee report on HB 191. Referred to Second Reading.

MOTIONS

Day moved that HB 640 be passed for the day. Motion carried.

Huennekens moved that HB 689 be rereferred from the Committee on Natural Resources to the Committee on Taxation. Motion carried.

Scully moved that HB 281 be rereferred from Second Reading to the Committee on Rules. Motion carried.

Meloy moved that HB 553 be rereferred from Engrossing to the Committee on Taxation. Motion carried.

Meloy moved that the rules be suspended and the following bills and resolutions be placed on Second Reading today: HB 77, HB 156, HB 181, HB 558, HB 564, HB 588, HB 672, HB 687, HB 763, HB 768, HB 788, HB 791, HB 794, HB 797, HJR 15, HJR 28, and HJR 63. Motion carried.

REPORTS OF STANDING COMMITTEES

NATURAL RESOURCES (Shelden, Chairman):

HB 604, introduced copy, be amended as follows:

2/23/77

That HB 307 do pass. (77-8)

That HB 334 be passed for the day.

That HB 343 do pass. (62-25)

That HB 346 do pass. (68-20)

That HB 370 be passed for the day.

That HB 564 be passed for the day.

That HB 711 be passed for the day.

That HJR 25 be amended as follows:

1. Amend page 1, lines 9 through 12.

Strike: lines 9 through 12 in their entirety

2. Amend page 2, lines 12 through 19.

Strike: lines 12 through 19 in their entirety

3. Amend page 2, lines 1 through 5.

Strike: lines 1 through 5 in their entirety (53-41)

And as amended, do pass. (82-11)

That HB 687 be placed below HB 286 on the Second Reading board.

That HB 588 be amended as follows:

1. Amend page 7, section 4, lines 21 and 22.

Following: "shall"

Insert: " , within 60 days of receipt of the complete application,"
(88-0)

And as amended, do pass. (65-21)

That HB 763 do pass. (79-0)

That HB 768 be amended as follows:

1. Amend page 3, section 1, line 15.

Following: "school."

Insert: "In order to qualify for state equalization aid, the tribal education system shall meet the accreditation standards of public schools in Montana and shall be approved by the board of public education." (79-1)

And as amended, do pass. (51-36)

That HB 788 do pass. (77-16)

That HB 791 be passed to the bottom of the Second Reading board.

That HB 794 do pass. (85-0)

That HB 797 do pass. (84-7)

That HJR 15 do pass. (86-0)

That HJR 28 do not pass. (63-31)

That HJR 63 be amended as follows:

1. Amend page 5, subsection (e), line 1.

Following: "enforcement"

Strike: "or criminal prosecution" (78-0)

FORTY-EIGHTH LEGISLATIVE DAY

Helena, Montana
February 26, 1977

House Chambers
Capitol Building

House convened at 10:00 a.m., Mr. Speaker Pro Tem Brand in the Chair. Invocation by the Chaplain. Pledge of Allegiance to the Flag.

Roll call. All members present except J. Gunderson, excused; Aageson, absent. Quorum present.

Mr. Speaker: We, your Committee on Legislative Administration/Bills and Journal, having examined the daily journal for the Forty-seventh Legislative Day, find the same to be correct.

QUILICI, Chairman

REPORTS OF STANDING COMMITTEES

BILLS (Quilici, Chairman):

2/26/77

Correctly engrossed - HB 286, HB 343, HB 426, HJR 25.

Considered correctly engrossed - HB 346, HB 457, HB 558, HB 656, HB 658, HB 763, HB 788, HB 797, HB 809.

Correctly printed - HB 387, HB 462, HB 553, HB 604, HB 661, HB 685, HB 756, HB 816.

MESSAGES FROM THE GOVERNOR

February 25, 1977

The Honorable John Driscoll
Speaker of the House of Representatives
State Capitol
Helena, Montana 59601

Dear Sir:

This is to inform you that I have this day approved House Bill Nos. 64 and 167.

Sincerely,

THOMAS L. JUDGE
Governor

MESSAGES FROM THE OTHER HOUSE

Resolutions passed by the Senate and transmitted
to the House for concurrence:

2/25/77

Senate Joint Resolution No. 16, introduced by Brown

Senate Joint Resolution No. 22, introduced by Hager

Senate Joint Resolution No. 23, introduced by Brown, Roberts, et al

Senate Joint Resolution No. 24, introduced by Jergeson, Etchart, et al

Senate Joint Resolution No. 27, introduced by Jergeson, Etchart, Kolstad

Senate Joint Resolution No. 29, introduced by Brown, Roberts, et al

Senate Joint Resolution No. 34, introduced by Goodover, McOmber, Murphy

Total 4

House Bill No. 763 was passed by the following vote:

Ayes: Aageson, R. Baeth, W. Baeth, Bardanouve, Barrett, Bengtson, Bertelsen, Bradley, Brand, Burnett, Colburn, Conroy, Cooney, Courtney, Cox, Curtiss, Dassinger, Davis, Day, Dussault, Ellerd, Ellis, Ellison, Ernst, Estenson, Eudaily, Fabrega, Fagg, Feda, Frates, Gerke, Gilligan, Gould, E. Gunderson, Halvorson, Hand, Hansen, Harper, Harrington, Hirsch, Holmes, Huennekens, Hurwitz, Jensen, Johnston, Kanduch, Kenny, Kessler, Keyser, Kimble, Kropp, Kvaalen, Lien, Lory, Lund, McLane, Manuel, Marks, Meloy, Menahan, Metcalf, Meyer, Moore, Mular, Nathe, O'Connell, O'Keefe, Palmer, Pistoria, Porter, Quilici, Ramirez, Ryan, Scully, Seifert, Severson, Shelden, Smith, South, Staigmiller, Stobie, Teague, Tower, Tropila, Turner, Uhde, Underdal, Vincent, Vinger, Waldron, Williams, Wood, Wyrick, Mr. Speaker.

Total 94

Noes: None.

Total 0

Excused: J. Gunderson.

Total 1

Absent or not voting: Kennerly, Lynch, Robbins, Roth, Sivertsen.

Total 5

House Bill No. 788 was passed by the following vote:

Ayes: Aageson, R. Baeth, W. Baeth, Bardanouve, Barrett, Bengtson, Bertelsen, Bradley, Colburn, Cooney, Courtney, Cox, Curtiss, Dassinger, Day, Dussault, Ellison, Ernst, Estenson, Eudaily, Fabrega, Fagg, Feda, Frates, Gilligan, Gould, E. Gunderson, Halvorson, Hand, Hansen, Harper, Harrington, Hirsch, Holmes, Huennekens, Hurwitz, Jensen, Johnston, Kanduch, Kessler, Keyser, Kimble, Kropp, Kvaalen, Lien, Lory, Lund, McLane, Manuel, Marks, Meloy, Menahan, Metcalf, Meyer, Moore, Mular, Nathe, O'Connell, O'Keefe, Palmer, Porter, Quilici, Ramirez, Ryan, Scully, Seifert, Severson, Shelden, South, Staigmiller, Stobie, Teague, Tower, Tropila, Turner, Uhde, Vincent, Vinger, Waldron, Wood, Mr. Speaker.

Total 81

Noes: Brand, Burnett, Conroy, Davis, Ellerd, Ellis, Gerke, Kenny, Pistoria, Smith, Underdal, Williams, Wyrick.

Total 13

Excused: J. Gunderson.

Total 1

Absent or not voting: Kennerly, Lynch, Robbins, Roth, Sivertsen.

Total 5

House Bill No. 794 was passed by the following vote:

Ayes: Aageson, R. Baeth, W. Baeth, Bardanouve, Barrett, Bengtson, Bertelsen, Bradley, Brand, Burnett, Colburn, Conroy, Cooney, Courtney, Cox, Curtiss, Dassinger, Davis, Day, Dussault, Ellerd, Ellis, Ellison, Ernst, Estenson, Eudaily, Fabrega, Fagg, Feda, Frates, Gerke, Gilligan, Gould, E. Gunderson, Halvorson, Hand, Hansen, Harper, Harrington, Hirsch, Holmes, Huennekens, Hurwitz, Jensen, Kanduch, Kenny, Kessler, Keyser, Kimble, Kropp, Kvaalen, Lien, Lory, Lund, McLane, Manuel, Marks, Meloy, Menahan, Metcalf, Meyer, Moore, Mular, Nathe, O'Connell, O'Keefe, Palmer, Pistoria, Porter, Quilici, Ramirez, Ryan, Scully, Seifert, Severson, Shelden, Smith, South, Staigmiller, Stobie,

House Bill No. 77, introduced by Barrett, Lory, Scully, Vincent (by request)

House Bill No. 96, introduced by Fagg, Williams (by request)

House Bill No. 116, introduced by Bradley, Meloy, et al

House Bill No. 150, introduced by Bradley, Fagg

House Bill No. 178, introduced by Harrington, Quilici, et al

House Bill No. 182, introduced by Meloy (by request)

House Bill No. 226, introduced by Keyser, Nathe, et al

House Bill No. 414, introduced by Lynch (by request)

House Bill No. 516, introduced by Underdal, Ageson, Roth, et al

House Bill No. 526, introduced by Lien, Bertelsen, et al

House Bill No. 607, introduced by Fagg

House Bill No. 612, introduced by Brand (by request)

House Bill No. 763, introduced by Ramirez, Meloy

House Bill No. 815, introduced by Labor Committee

House Joint Resolution No. 36, introduced by Conroy, Kimble, Bardanouve

House Joint Resolution No. 60, introduced by Bradley, Meloy

Bill not concurred in as amended
and returned to the House:

3/21/77

House Bill No. 692, introduced by Bradley, Huennekens, Meloy

Bill on Committee of the Whole in the Senate,
recommended that further action be
indefinitely postponed, report adopted,
and returned to the House:

3/21/77

House Bill No. 743, introduced by Ramirez, Holmes, Hand, et al

MOTIONS

Meloy moved that the Governor's proposed amendments to HB 196 be placed on the Second Reading board tomorrow. Motion carried.

SPECIAL ORDERS OF THE DAY

The Speaker introduced the Missoula All-City Girls Seventh and Eighth Grade Chorus who sang several selections accompanied by Carmen McFarland and directed by Debbie Jones.

REPORTS OF SELECT COMMITTEES

FREE CONFERENCE COMMITTEE REPORT ON SJR 3

Report No. 1, March 21, 1977

Mr. President and Speaker of the House:

We, your Joint Free Conference Committee on Senate Joint Resolution No. 3, met on March 21, 1977, and considered House Committee on Fish and Game Amendments dated March 8, and recommend as follows:

- That SA to HB 414 be concurred in. (87-0)
- That SA to HB 612 be not concurred in. (80-6)
- That SA to HB 685 be concurred in. (85-0)
- That SA to HB 757 be concurred in. (83-0)
- That SA to HB 759 be concurred in. (80-0)
- That SA to HB 763 be concurred in. (81-0)
- That SA to HB 815 be concurred in. (82-1)
- That SA to HJR 21 be not concurred in. (82-2)
- That HJR 36 be placed below HJR 60.
- That HJR 60 be concurred in. (71-7)
- That HJR 36 be passed for the day.
- That the Conference Committee Report on SJR 3 be adopted. (76-9)
- That the Governor's Amendments to HB 196 be concurred in. (80-6)
- That the committee rise and report. (Meloy, Chairman)

Vincent moved that SA to HB 4 be segregated from the Committee of the Whole report and as amended be adopted. Motion carried.

REPORTS OF STANDING COMMITTEES

BILLS (Quilici, Chairman):

3/23/77

Correctly enrolled - HB 62.

Examined by Sponsors and found to be correct - HB 19, HB 26, HB 104, HB 101, HB 111, HB 221, HB 227, HB 230, HB 237, HB 244, HB 273, HB 291, HB 314, HB 339, HB 343, HB 430, HB 497, HB 535, HB 540, HB 542, HB 581, HB 591, HB 656, HJR 27, HJR 29, HJR 41.

Will be signed by the Speaker on adjournment, 3/23/77 - HB 19, HB 26, HB 101, HB 104, HB 111, HB 221, HB 227, HB 230, HB 237, HB 244, HB 273, HB 291, HB 314, HB 339, HB 343, HB 430, HB 497, HB 535, HB 540, HB 542, HB 581, HB 591, HB 656, HJR 27, HJR 29, HJR 41, SB 38, SB 117, SB 199.

Signed by the Speaker of the House and President of the Senate and delivered to the Governor for his approval at 2:30 p.m., 3/23/77 - HB 42, HB 57, HB 97, HB 99, HB 256, HB 288, HB 323, HB 328, HB 331, HB 362, HB 376, HB 395, HB 396, HB 417, HB 418, HB 436, HB 586.

STATE ADMINISTRATION (Brand, Chairman)

3/23/77

SB 162, third reading copy, be amended as follows:

1. Amend page 8, section 4, subsection (1), line 5.

Following: "(months)"

Strike: "1 month"

Insert: "6 months"

2. Amend page 9, section 5, line 15.

Following: "(1 year)"

Strike: "15"

Insert: "22"

Hirsch, Holmes, Huennekens, Hurwitz, Johnston, Kanduch, Kenny, Kessler, Keyser, Kimble, Kropp, Kvaalen, Lien, Lory, Lund, Lynch, McLane, Manuel, Marks, Meloy, Menahan, Metcalf, Meyer, Moore, Mular, Nathe, O'Connell, O'Keefe, Palmer, Pistoria, Porter, Quilici, Ramirez, Robbins, Roth, Ryan, Scully, Seifert, Severson, Sivertsen, Smith, South, Staigmillar, Stobie, Tower, Tropila, Turner, Uhde, Underdal, Vincent, Waldron, Williams, Wood, Wyrick, Mr. Speaker Pro Tem.

Total 93

Noes: Jensen, Teague, Vinger.

Total 3

Excused: Driscoll, Kennerly, Shelden.

Total 3

Absent or not voting: Gerke.

Total 1

Senate Amendments to House Bill No. 759 were concurred in by the following vote:

Ayes: Aageson, R. Baeth, W. Baeth, Bardanouve, Barrett, Bengtson, Bertelsen, Bradley, Burnett, Colburn, Conroy, Cooney, Courtney, Cox, Curtiss, Dassinger, Davis, Day, Dussault, Ellerd, Ellis, Ellison, Ernst, Estenson, Eudaily, Fabrega, Fagg, Feda, Gilligan, Gould, E. Gunderson, J. Gunderson, Halvorson, Hand, Harper, Harrington, Hirsch, Holmes, Huennekens, Hurwitz, Kanduch, Kenny, Kessler, Keyser, Kimble, Kropp, Kvaalen, Lien, Lory, Lund, Lynch, McLane, Manuel, Marks, Meloy, Menahan, Metcalf, Meyer, Moore, Mular, Nathe, O'Connell, O'Keefe, Palmer, Pistoria, Porter, Quilici, Ramirez, Robbins, Ryan, Scully, Seifert, Severson, Sivertsen, Staigmillar, Teague, Tower, Tropila, Uhde, Underdal, Vincent, Waldron, Williams, Wood, Wyrick, Mr. Speaker Pro Tem.

Total 86

Noes: Frates, Hansen, Jensen, Smith, Stobie, Turner, Vinger.

Total 7

Excused: Driscoll, Kennerly, Shelden.

Total 3

Absent or not voting: Gerke, Johnston, Roth, South.

Total 4

Senate Amendments to House Bill No. 763 were concurred in by the following vote:

Ayes: Aageson, R. Baeth, W. Baeth, Bardanouve, Barrett, Bengtson, Bertelsen, Bradley, Burnett, Colburn, Conroy, Cooney, Courtney, Cox, Curtiss, Dassinger, Davis, Day, Dussault, Ellerd, Ellis, Ellison, Ernst, Estenson, Eudaily, Fabrega, Fagg, Feda, Frates, Gilligan, Gould, E. Gunderson, J. Gunderson, Halvorson, Hand, Hansen, Harper, Harrington, Hirsch, Holmes, Huennekens, Hurwitz, Jensen, Johnston, Kanduch, Kenny, Kessler, Keyser, Kimble, Kropp, Kvaalen, Lien, Lory, Lund, Lynch, McLane, Manuel, Marks, Meloy, Menahan, Metcalf, Meyer, Moore, Mular, Nathe, O'Connell, O'Keefe, Palmer, Pistoria, Porter, Quilici, Ramirez, Robbins, Ryan, Scully, Seifert, Severson, Sivertsen, Smith, South, Staigmillar, Stobie, Teague, Tower, Tropila, Turner, Underdal, Vincent, Vinger, Waldron, Williams, Wood, Wyrick, Mr. Speaker Pro Tem.

Total 94

Noes: Uhde.

Total 1

Excused: Driscoll, Kennerly, Shelden.

Total 3

Absent or not voting: Gerke, Roth.

Total 2

Senate Amendments to House Bill No. 815 were concurred in by the following vote:

Ayes: Aageson, R. Baeth, W. Baeth, Bardanouve, Barrett, Bengtson, Bertelsen, Bradley, Burnett, Colburn, Conroy, Cooney, Courtney, Cox, Curtiss, Dassinger, Davis, Day, Dussault, Ellerd, Ellis, Ellison, Ernst, Estenson, Eudaily, Fabrega, Fagg, Fedra, Frates, Gilligan, E. Gunderson, J. Gunderson, Halvorson, Hand, Hansen, Harper, Harrington, Hirsch, Holmes, Huennekens, Hurwitz, Jensen, Johnston, Kanduch, Kenny, Kessler, Keyser, Kimble, Kropp, Kvaalen, Lien, Lory, Lund, Lynch, McLane, Manuel, Marks, Meloy, Menahan, Metcalf, Meyer, Moore, Mular, Nathe, O'Connell, O'Keefe, Palmer, Pistoria, Porter, Quilici, Ramirez, Robbins, Ryan, Scully, Seifert, Severson, Sivertsen, Smith, South, Staigmiller, Stobie, Teague, Tower, Tropila, Turner, Uhde, Underdal, Vincent, Vinger, Waldron, Williams, Wood, Wyrick, Mr. Speaker Pro Tem.

Total 94

Noes: None.

Total 0

Excused: Driscoll, Kennerly, Shelden.

Total 3

Absent or not voting: Gerke, Gould, Roth.

Total 3

Senate Amendments to House Joint Resolution No. 60 were concurred in by the following vote:

Ayes: Aageson, R. Baeth, W. Baeth, Bardanouve, Barrett, Bengtson, Bertelsen, Bradley, Colburn, Conroy, Cooney, Courtney, Cox, Curtiss, Dassinger, Day, Dussault, Ellerd, Ellis, Ellison, Eudaily, Fabrega, Fagg, Fedra, Frates, Gilligan, E. Gunderson, J. Gunderson, Halvorson, Hand, Harper, Harrington, Hirsch, Holmes, Huennekens, Hurwitz, Jensen, Johnston, Kanduch, Kessler, Keyser, Kimble, Kvaalen, Lien, Lory, Lund, Lynch, McLane, Manuel, Marks, Meloy, Menahan, Metcalf, Meyer, Moore, Mular, Nathe, O'Connell, O'Keefe, Palmer, Porter, Quilici, Ramirez, Robbins, Ryan, Scully, Seifert, Severson, Sivertsen, South, Staigmiller, Teague, Tropila, Uhde, Underdal, Vincent, Vinger, Waldron, Williams, Wyrick, Mr. Speaker Pro Tem.

Total 81

Noes: Burnett, Ernst, Hansen, Kenny, Kropp, Smith, Stobie, Tower, Turner, Wood.

Total 10

Excused: Driscoll, Kennerly, Shelden.

Total 3

Absent or not voting: Davis, Estenson, Gerke, Gould, Pistoria, Roth.

Total 6

SECOND READING OF BILLS (COMMITTEE OF THE WHOLE)

Meloy moved that the House resolve itself into a Committee of the Whole, for the consideration of business on Second Reading. Motion carried.

SEVENTY-FIRST LEGISLATIVE DAY

Helena, Montana
March 28, 1977

House Chambers
Capitol Building

House convened at 1:30 p.m., Mr. Speaker in the Chair. Invocation by Reverend John Robertson, Diocese of Helena. Pledge of Allegiance to the Flag.

Roll call. All members present except Kennerly, Quilici, Seifert, excused. Quorum present.

Mr. Speaker: We, your Committee on Legislative Administration/Bills and Journal, having examined the daily journal for the Seventieth Legislative Day, find the same to be correct.

QUILICI, Chairman

COMMUNICATIONS AND PETITIONS

March 24, 1977

**The Honorable John Driscoll
Speaker of the House of Representatives
Capitol Building
Helena, Montana 59601**

Dear Mr. Driscoll:

The following Pages will be employed in the House of Representatives for the week of March 28th through April 2nd, 1977:

Albert T. Duke
Tammy Elser
Rick Folda
Dennis Dean Gerke
Allison Priscilla Haegen
Tim O'Leary
Diana R. Parker
Sherri L. Stieg
Jeff W. Thomas

Great Falls
Missoula
Havre
Columbus
Buffalo
Billings
Missoula
Circle
Billings

The following Page will work from March 30th through April 5th, 1977:

Michael Garrity Helena

The following Pages will be working from March 31st through April 5th, 1977:

James Michael Callahan
Honorary Page, Annette Koinberg

Butte
Sweden

Sincerely,

Sam Wolfe
Sergeant-at-Arms

REPORTS OF STANDING COMMITTEES

BILLS (E. Gunderson, Vice-Chairman):

3/28/77

Correctly printed - HJR 92.

Correctly enrolled - HB 43, HB 73, HB 77, HB 113, HB 116, HB 96,
HB 178, HB 226, HB 301, HB 516, HB 526, HB 551, HB 607,
HB 685, HB 757, HB 763, HB 815.

Signed by the Speaker of the House and President of the Senate and delivered to the Governor for his approval at 11:00 a.m., 3/28/77 - HB 95, HB 373, HB 379, HB 476, HB 490, HB 514, HB 709, HB 736.

Were signed by the Speaker on adjournment, 3/26/77 - HB 379, SB 5, SB 29, SB 41, SB 43, SB 91, SB 108, SB 115, SB 169, SB 186, SB 191, SB 215, SB 229, SB 234, SB 250, SB 262, SB 314, SB 405, SB 415, SB 430, SJR 18, SJR 22, SJR 32, SJR 33, SJR 34, SJR 38, SJR 40.

Will be signed by the Speaker on adjournment, 3/28/77 - HB 43, HB 73, HB 77, HB 96, HB 113, HB 116, HB 178, HB 226, HB 301, HB 516, HB 526, HB 551, HB 607, HB 669, HB 685, HB 757, HB 763, HB 815, SB 24, SB 49, SB 73, SB 79, SB 349, SB 361, SB 397.

Objection raised by Driscoll on 3/26/77 on adverse committee report on HB 825. Referred to Second Reading.

JUDICIARY (Scully, Chairman):

3/25/77

SB 37, third reading copy, be amended as follows:

1. Amend page 1, section 2, line 20.

Following: "agencies"

Strike: "are accompanied by"

Insert: "contain"

2. Amend page 2, section 4, subsection (1), lines 8 through 10.

Following: "shall"

Strike: lines 8 through 10 in their entirety

3. Amend page 2, section 4, subsection (1), lines 13 and 14.

Following: "(report)"

Strike: "append a statement to the committee report"

Insert: "begin with a preamble"

4. Amend page 2, section 4, subsection (1), line 15.

Following: "the"

Strike: "committee members"

Insert: "sponsor's"

5. Amend page 2, section 4, subsection (1), line 18.

Following: "the"

Strike: "statement"

Insert: "preamble"

6. Amend page 2, section 4, subsection (1), line 20.

Following: "which"

Strike: "is not accompanied by the statement"

Insert: "does not contain such a preamble"

7. Amend page 2, section 4, subsection (1), line 21.

Following: "from"

Strike: "the"

Insert: "a"

8. Amend page 2, section 4, subsection (2), lines 22 through line 6 on page 3.

Following: line 21

Strike: subsection (2) in its entirety

Insert: "(2) Unless an act contains a preamble in accordance with subsection (1), any delegation of authority in the act is void."

Senator McCallum

3/26/77

Senate acceded to the request of the House dated 3/25/77, and authorized the President to appoint the following Conference Committee to meet with a like committee of the House to confer on Senate Amendments to House Bill No. 4:

Senator Lensink, Chairman
Senator Towe
Senator Lockrém

3/26/77

Senate, on 3/25/77, failed to concur in House Amendments to Senate Bill No. 101, and the President was authorized to appoint the following Free Conference Committee, and requests the House to appoint a like committee to confer on Senate Bill No. 101:

Senator Jergeson, Chairman
Senator Brown
Senator Murphy

3/26/77

Senate, on 3/25/77, failed to concur in House Amendments to Senate Bill No. 331, and the President was authorized to appoint the following Free Conference Committee, and requests the House to appoint a like committee to confer on Senate Bill No. 331:

Senator Lensink, Chairman
Senator Rasmussen
Senator Peterson

MOTIONS

Meloy moved that the Speaker be authorized to appoint a free conference committee of three to meet with a like committee from the Senate on SB 101 and SB 331. Motion carried.

Meloy moved that the House accede to the Senate request and return HB 340 and HB 587 for their consideration. Motion carried.

Meloy moved that consideration of HB 141 be passed for the day. Motion carried.

Meloy moved that consideration of SB 440 be passed for the day. Motion carried.

Meloy moved that consideration of HB 365 be passed for the day. Motion carried.

Kimble moved that consideration of SB 162 be passed to the 75th Legislative Day. Motion carried.

Waldron moved that the rules be suspended to allow the introduction of a resolution concerning the use of snowmobiles on public land. Motion failed.

Barrett moved that consideration of SJR 25 be passed to the 75th Legislative Day. Motion carried.

REPORTS OF STANDING COMMITTEES

Examined by Sponsors and found to be correct - HB 73, HB 77, HB 113, HB 226, HB 516, HB 526, HB 757, HB 763.

the source of supply in accordance with the Montana Water Use Act.

((2) A reservation established before such application for permit is granted is a preferred use over the right to appropriate water pursuant to the permit, and the permit, if granted, shall be issued subject to that preferred use.)'

Section 6. Legislative modification. The order of preferred uses established in (section 2 of this act)* may be altered by legislative action for waters or sections of waters in particular locations but such alteration may not be retroactive.

Section 7. Effective date. This act is effective on its passage and approval."

(Material in parentheses denotes cancelled type.)

*(Material in parentheses denotes information bracketed by compiler.)

And as amended, be concurred in. Report adopted.

Will be signed by the Speaker on adjournment, 3/29/77 - HB 63, HB 108, HB 116, HB 202, HB 308, HB 437, HB 495, HB 623, HB 637, HB 641, HB 645, HB 759, HB 755, HB 764, HJR 36, HJR 49, HJR 60, HJR 78.

Were signed by the Speaker on adjournment, 3/28/77 - HB 43, HB 73, HB 77, HB 96, HB 113, HB 116, HB 178, HB 226, HB 301, HB 516, HB 526, HB 551, HB 607, HB 669, HB 685, HB 757, HB 763, HB 815, SB 24, SB 49, SB 73, SB 79, SB 349, SB 361, SB 397.

On motion by Teague, and in accordance with the 24-hour rule, the adverse committee report on SB 216 was adopted by the following vote:

Ayes: Aageson, R. Baeth, W. Baeth, Barrett, Bengtson, Bertelsen, Bradley, Brand, Burnett, Conroy, Cooney, Courtney, Curtiss, Dassinger, Davis, Day, Ellerd, Ellis, Ellison, Ernst, Estenson, Eudaily, Fagg, Feda, Frates, Gerke, Gilligan, Gould, E. Gunderson, J. Gunderson, Halvorson, Hand, Hansen, Harper, Harrington, Hirsch, Holmes, Huennekens, Hurwitz, Jensen, Johnston, Kanduch, Kenny, Kessler, Keyser, Kimble, Kropp, Kvaalen, Lien, Lory, Lund, Lynch, McLane, Marks, Meloy, Menahan, Metcalf, Moore, Mular, O'Connell, O'Keefe, Pistoria, Porter, Quilici, Ramirez, Robbins, Roth, Scully, Seifert, Severson, Sheldon, Smith, South, Staigmiller, Stobie, Teague, Tower, Tropila, Underdal, Vincent, Vinger, Williams, Wood, Wyrick, Mr. Speaker.

Total 85

Noes: Nathe, Turner, Uhde.

Total 3

Excused: Kennerly.

Total 1

Absent or not voting: Bardanouve, Colburn, Cox, Dussault, Fabrega, Manuel, Meyer, Palmer, Ryan, Sivertsen, Waldron.

Total 11

On motion by Scully, and in accordance with the 24-hour rule, the adverse committee report on SB 419 was adopted by the following vote:

Ayes: Aageson, R. Baeth, W. Baeth, Bengtson, Bertelsen, Bradley, Brand, Burnett, Conroy, Cooney, Courtney, Cox, Curtiss, Dassinger, Day, Ellerd,

transferred from one institution to another or from state institutions to community programs." (62-17)

That the committee rise and report and beg leave to sit again. (Moore, Chairman) Report adopted.

REPORTS OF STANDING COMMITTEES

BILLS (Quilici, Chairman):

4/1/77

Examined by Sponsors and found to be correct - HB 100, HB 157, HB 186, HB 309, HB 584, HB 804, HJR 81.

Correctly enrolled - HB 186, HB 584.

Will be signed by the Speaker on adjournment, 4/1/77 - HB 100, HB 157, HB 186, HB 309, HB 584, HB 804, HJR 81, SB 47, SB 131, SB 231, SB 254, SB 270, SB 277, SB 290, SB 301, SB 327, SB 358, SB 366, SJR 20, SJR 41.

Were signed by the Speaker on adjournment, 3/31/77 - HB 28, HB 80, HB 175, HB 196, HB 300, HB 305, HB 371, HB 404, HB 468, HB 523, HB 533, HB 553, HB 742, SB 4, SB 17, SB 128, SB 138, SB 178, SB 181, SB 207, SB 219, SB 241, SB 258, SB 261, SB 287, SB 300, SB 316, SB 326, SB 393, SB 420, SJR 14, SJR 16, SJR 17, SJR 23, SJR 24.

Signed by the Speaker of the House and President of the Senate and delivered to the Governor for his approval at 11:45 a.m., 4/1/77 - HB 43, HB 71, HB 73, HB 77, HB 96, HB 113, HB 178, HB 226, HB 236, HB 260, HB 301, HB 414, HB 516, HB 526, HB 551, HB 583, HB 607, HB 669, HB 677, HB 685, HB 757, HB 763, HB 815.

APPROPRIATIONS (Bardanoue, Chairman):

3/29/77

HB 6, do not pass.

HB 65, do not pass.

HB 85, do pass. Report adopted.

HB 142, do not pass.

HB 168, do pass. Report adopted.

HB 207, do pass. Report adopted.

HB 208, do pass. Report adopted.

HB 232, do not pass.

HB 250, do pass. Report adopted.

HB 261, do not pass.

HB 267, do not pass.

HB 272, introduced bill, be amended as follows:

1. Amend section 5, page 2, lines 24 and 25.

Following: "act" on line 24

Strike: "\$2 million"

Insert: "\$500,000"

Following: "and" on line 25

Strike: "\$2 million"

Insert: "\$500,000"

And as amended, do not pass.

HB 278, do not pass.

HB 292, do pass. Report adopted.

HB 295, do pass. Report adopted.

HB 311, do not pass.

HB 312, do not pass.

HB 342, do not pass.

1. Amend title, page 2, line 2.

Following: "board;"

Strike: "and"

2. Amend title, page 2, line 4.

Following: "water"

Insert: "; to provide that attorney fees shall be awarded to the prevailing party in any court litigation on an application for a permit; and providing for an immediate effective date"

3. Amend page 16.

Following: line 22

Insert: "Section 11. There is a new R.C.M. section numbered 89-8-100.1 that reads as follows:

89-8-100.1. Recovery of attorney fees by prevailing party. If a final decision of the department on an application for a permit is appealed to district court, the district court shall award the prevailing party reasonable attorney fees.

Section 12. Effective date. This act is effective upon its passage and approval."

And that the Conference Committee Report on House Bill No. 664 be adopted.

FOR THE HOUSE:

DAY, Chairman

SCULLY

ELLISON

FOR THE SENATE:

BOYLAN, Chairman

DOVER

BERGREN

Report adopted.

MESSAGES FROM THE GOVERNOR

April 5, 1977

The Honorable John Driscoll
Speaker of the House of Representatives
State Capitol
Helena, Montana 59601

Dear Mr. Speaker:

This is to inform you that I have this day approved House Bill Nos. 43, 71, 77, 175, 226, 236, 260, 300, 305, 404, 468, 523, 526, 533, 607, 669, 677, 685, 742, 763, and 815.

Sincerely,

TED SCHWINDEN
Acting Governor

April 5, 1977

The Honorable Gordon McOmber
President of the Senate
State Capitol
Helena, Montana 59601

Dear President McOmber:

This is to inform you that I have this day approved Senate Bill Nos. 4, 17, 58, 128, 131, 138, 178, 181, 219, 231, 241, 254, 258, 261, 270, 277, 287, 290, 300, 301, 316, 326, 327, 358, 366, 393, and 420.

LABOR AND EMPLOYMENT RELATIONS (Lee, Chairman):

HB 581 be not concurred in.

Thereupon, the Adverse Committee Report was adopted by the following roll call vote:

Ayes: Aber, Blaylock, Boylan, Devine, Dover, Etchart, Fasbender, Goodover, Graham, Hazelbaker, Himsl, Lockrem, Lowe, Manley, Mathers, Murphy, Murray, Nelson, Norman, Olson, Regan, Roskie, Thiessen, Turnage, Mr. President.
Total 25

Noes: Bergren, Brown, Dunkle, Flynn, Galt, Healy, Jergeson, Kolstad, Lee, Lensink, Manning, Mehrens, Peterson, Rasmussen, Roberts, E. Smith, R. Smith, Stephens, Story, Thomas, Towe, Watt.
Total 22

Excused: Hager, McCallum.
Total 2

Absent or not voting: Warden.
Total 1

MESSAGES FROM THE HOUSE OF REPRESENTATIVES

House Bill No. 297, introduced by Driscoll, requiring adoption by an affirmative roll call vote of two-thirds of all the members of the legislature, was read February 26, 1977 three several times, and passed the House, and is herewith transmitted to the Senate with the following vote:

HOUSE OF REPRESENTATIVES

YEAS - 62
NAYS - 37

House Bill No. 213, introduced by Gerke, Lynch, et al, requiring adoption by an affirmative roll call vote of two-thirds of all the members of the legislature, was read February 26, 1977, three several times, and passed the House, and is herewith transmitted to the Senate with the following vote:

HOUSE OF REPRESENTATIVES

YEAS - 61
NAYS - 39

Transmitted to the Senate for concurrence:

House Bill No. 286, introduced by Palmer, Hansen, et al

House Bill No. 343, introduced by Conroy

House Bill No. 344, introduced by J. Gunderson, Dassinger, et al

House Bill No. 346, introduced by Estenson, (for Department of Administration)

House Bill No. 457, introduced by Vincent, (By Request of the Attorney General)

House Bill No. 558, introduced by Fabrega, Conroy, et al

House Bill No. 656, introduced by Wood, Day, et al

House Bill No. 658, introduced by Lynch

House Bill No. 763, introduced by Ramirez, Meloy

HB 656, introduced by Wood, Day, Bengtson, Davis, Turner, Ellerd, Mular, Halvorson, Lien, Bertelsen, Eudaily, Tower, Severson, Seifert, Dassinger, Kropp, Wyrick. Referred to Committee on Highways and Transportation.

HB 658, introduced by Lynch, (By Request of the Department of Institutions). Referred to Committee on Public Health, Welfare, and Safety.

HB 763, introduced by Ramirez, Meloy. Referred to Committee on Judiciary.

HB 788, introduced by Dussault, Fagg, Kimble, Palmer, Cooney. Referred to Committee on State Administration.

HB 794, introduced by Brand, (By Request of the Department of Administration). Referred to Committee on State Administration.

HB 809, introduced by Scully, (for Judiciary Committee). Referred to Committee on Agriculture, Livestock, and Irrigation.

SECOND READING OF BILLS (COMMITTEE OF THE WHOLE)

Senator E. Smith in the Chair. Committee arose.

Senate resumed. President McOmber in the Chair.

Mr. President: We, your Committee of the Whole, having had under consideration business on Second Reading, recommend as follows:

That House Bill No. 246 be concurred in. Unanimously concurred in.

That House Bill No. 289 be amended as follows:

1. Amend page 1, section 1, line 14.

Following: "consists of"

Strike: "five"

Insert: "six"

2. Amend page 1, section 1, lines 20 through 23.

Following: "(c)"

Strike: lines 20 through 23 in their entirety

Insert: "two persons appointed as representatives of the public; (d) one nonvoting member who shall be a retired teacher who was a member of the retirement system at the time of retirement."

3. Amend page 2, section 2, lines 8 through 12.

Following: line 7

Strike: section 2 in its entirety

(Amendment opposed by Blaylock, Brown, Etchart, Healy, Jergeson, Kolstad, Lee, Lowe, Mehrens, Murray, Peterson, Rasmussen, Roskie, E. Smith, R. Smith, Thomas, Towe, Warden, Watt.)

And, as so amended, be concurred in. Opposed by Blaylock, Devine, Healy, Himsl, Lee, Lowe, Manley, Mehrens, Peterson, E. Smith, R. Smith, Warden, Watt.)

That House Bill No. 483 be concurred in. Unanimously concurred in.

That consideration of House Bill No. 484 be passed. Unanimously passed.

That Senate Joint Resolution No. 40 be passed. Unanimously passed.

That House Bill No. 14 be concurred in. Unanimously concurred in.

That House Bill No. 17 be concurred in. Unanimously concurred in.

SIXTY-FIRST LEGISLATIVE DAY

Helena, Montana
March 16, 1977

Senate Chambers
Capitol Building

Senate convened at 1:30 p.m., President McOmber presiding. Invocation by the Reverend Dr. Tate, United Presbyterian Church, Miles City, Montana. Pledge of Allegiance to the Flag.

Roll call. All members present except Nelson, excused. Quorum present.

Mr. President: We, your Committee on Bills and Journal, having examined the daily journals for the Fifty-ninth and Sixtieth Legislative Days, find the same to be correct.

WARDEN, Chairman

REPORTS OF STANDING COMMITTEES

BILLS (Warden, Chairman):

Correctly engrossed - SB 431. Report adopted.

The Senate will please take note that the President did, at the hour of adjournment, March 15, 1977, sign the following bills:

SB 13, SB 45, SB 104

W. GORDON McOMBER
President

HIGHWAYS AND TRANSPORTATION (Manning, Chairman):

HJR 60, third reading bill, be amended as follows:

1. Amend title, line 7.
Following: "(primary)"
Insert: "primary"
2. Amend page 1, line 24.
Following: "A"
Insert: "primary"
3. Amend page 2, line 1.
Following: "state"
Strike: "motor pool"

(Material in parentheses denotes cancelled type.)

And, as so amended, be concurred in. Report adopted.

FISH AND GAME (Dunkle, Chairman):

HB 221, third reading bill, be concurred in. Report adopted.

JUDICIARY (Turnage, Chairman):

HB 497 be concurred in. Report adopted.
HB 273 be concurred in. Report adopted.
HB 291 be concurred in. Report adopted.
HB 343 be concurred in. Report adopted.
HB 763, third reading bill, be amended as follows:

1. Amend page 2, section 2, line 20.
Following: "defendant"
Strike: "is"
2. Amend page 2, section 2, line 21.
Following: "(a)"

Insert: "is"

3. Amend page 2, section 2, line 23.

Following: "debt;"

Strike: "or"

4. Amend page 2, section 2, line 24.

Following: "(b)"

Insert: "is"

5. Amend page 2, section 2, line 25.

Following: line 25

Insert: "(c) has the power to dispose of or conceal or remove from the state property which would be subject to execution; or

(d) is likely to suffer liens or encumbrances on his property which would be subject to execution;"

6. Amend page 3, section 3, line 16.

Following: "defendant"

Strike: "recovered"

Insert: "recovers"

7. Amend page 4, section 4, line 20.

Following: "(a)"

Insert: "in the case of real property, of his right to attachment and the necessity for seizure;

(b) in the case of personal property:

(i) "

8. Amend page 4, section 4, line 20.

Following: "to"

Strike: "possession"

Insert: "attachment"

9. Amend page 5, section 4, line 1.

Following: line 25 on page 4

Strike: "(b)"

Insert: "(ii) of his right to attachment and the necessity for seizure and "

10. Amend page 5, section 5, line 10.

Following: "issued"

Insert: "upon real property or"

Following: "(b)"

Insert: "(ii)"

11. Amend page 5, section 5, line 23.

Following: "(a)"

Strike: "there is no question of fact to be resolved and that"

12. Amend page 6, section 5, line 1.

Following: "(b)"

Strike: "there is no"

Insert: "the plaintiff cannot establish by a preponderance of the evidence the"

13. Amend page 6, section 6, line 5.

Following: "attachment"

Strike: "shall"

Insert: "may"

14. Amend page 6, section 6, line 7.

Following: line 6

Strike: "must"

Insert: "may"

And, as so amended, be concurred in. Report adopted.

STATE ADMINISTRATION (Towe, Chairman):

HB 150, third reading bill, be amended as follows:

1. Amend page 2, section 1, lines 7 through 9.

Following: line 6

Strike: lines 7 through 9 in their entirety

2. Amend page 2, section 2, lines 20 and 21.

Following: "trustees,"

Strike: "5 shall be professionals. One of the professionals shall be an archeologist"

Insert: "one shall be a recognized historian"

3. Amend page 2, section 2, line 24.

Following: "appoint"

Strike: "these professionals"

Insert: "a recognized historian"

4. Amend page 2, section 2, line 25.

Following: "as"

Strike: "vacancies"

Insert: "a vacancy shall"

And, as so amended, be concurred in. Report adopted.

HB 182, third reading bill, be amended as follows:

1. Amend page 1, section 1, line 24.

Following: "exceed"

Strike: "sixty dollars (\$60)"

Insert: "\$40"

2. Amend page 2, section 1, lines 4 and 5.

Following: "exceeding"

Strike: "sixteen dollars (\$16)"

Insert: "\$18"

3. Amend page 2, section 1, lines 12 and 13.

Following: "exceed"

Strike: "seventy dollars (\$70)"

Insert: "\$50"

And, as so amended, be concurred in. Report adopted.

HB 414, third reading bill, be amended as follows:

1. Amend page 1, section 1, line 13.

Following: line 12

Insert: "Section 1. There is a new R.C.M. section that reads as follows:

Name change. Wherever the words 'department of administration' appear in 43-1002, 43-1003, and 43-1006 pursuant to 81A-217, the words 'budget director' are substituted."

Renumber: subsequent sections

And, as so amended, be concurred in. Report adopted.

Senate resumed. President McOmber in the Chair.

Mr. President: We, your Committee of the Whole, having had under consideration business on Second Reading, recommend as follows:

That House Bill No. 291 be concurred in. Unanimously concurred in.

That House Bill No. 314 follow House Bill No. 80. Unanimously passed.

That House Bill No. 343 be concurred in. Opposed by R. Smith, Towe, Watt.

That House Bill No. 414 be concurred in. Unanimously concurred in.

That House Bill No. 497 be concurred in. Unanimously concurred in.

That House Bill No. 516 be concurred in. Unanimously concurred in.

That House Bill No. 607 follow House Bill No. 314. Unanimously passed.

That House Bill No. 763 be concurred in. Unanimously concurred in.

That House Joint Resolution No. 36 be concurred in. Opposed by Boylan, Dover, Goodover, Manley.

That House Joint Resolution No. 60 be concurred in. Opposed by Aber, Devine, Doyer, Etchart, Galt, Goodover, Healy, Himsl, Lee, McCallum, Nelson, Olson, Peterson, E. Smith.

That House Amendments to Senate Bill No. 40 be concurred in. Unanimously concurred in.

That House Amendments to Senate Bill No. 89 be concurred in. Unanimously concurred in.

That House Amendments to Senate Bill No. 144 be concurred in. Unanimously concurred in.

That House Amendments to Senate Bill No. 269 be concurred in. Unanimously concurred in.

That the Conference Committee Report on Senate Amendments to House Bill No. 581 be adopted. Unanimously adopted.

That House Bill No. 802 be amended as follows:

1. Amend title, line 5.

Following: "file a"

Strike: "financial statement"

Insert: "written certificate"

2. Amend page 1, section 1, line 13.

Following: "Bond"

Strike: "or statement"

Insert: "written certificate"

3. Amend page 1, section 1, line 18.

Following: "bond"

Strike: "or statement"

Insert: "written certificate"

4. Amend page 1, section 2, line 22.

Following: "Bond"

Strike: "or statement"

Insert: "written certificate"

Hazebaker, Himsl, Kolstad, Lensink, Lockrem, Lowe, McCallum, Manley, Murphy, Murray, Nelson, Norman, Olson, Roskie, R. Smith, Stephens, Thiessen.

Total 25

Excused: None.

Total 0

Absent or not voting: None.

Total 0

(Including the following pair: Warden, aye - Graham, no.)

House Bill No. 763 was concurred in by the following vote:

Ayes: Aber, Bergren, Blaylock, Boylan, Brown, Devine, Dover, Dunkle, Etchart, Fasbender, Flynn, Galt, Goodover, Graham, Hager, Hazebaker, Healy, Himsl, Jergeson, Kolstad, Lee, Lensink, Lockrem, Lowe, McCallum, Manley, Manning, Mathers, Mehrens, Murphy, Murray, Nelson, Norman, Olson, Peterson, Rasmussen, Regan, Roberts, Roskie, E. Smith, R. Smith, Stephens, Story, Thomas, Towe, Turnage, Watt, Mr. President.

Total 48

Noes: None.

Total 0

Excused: Warden.

Total 1

Absent or not voting: Thiessen.

Total 1

House Bill No. 815 was concurred in by the following vote:

Ayes: Aber, Bergren, Blaylock, Boylan, Brown, Devine, Dover, Dunkle, Etchart, Fasbender, Flynn, Galt, Goodover, Graham, Hager, Hazebaker, Healy, Himsl, Jergeson, Kolstad, Lee, Lensink, Lockrem, Lowe, McCallum, Manley, Manning, Mathers, Mehrens, Murphy, Murray, Nelson, Norman, Olson, Peterson, Rasmussen, Regan, Roberts, Roskie, E. Smith, R. Smith, Stephens, Story, Thiessen, Thomas, Towe, Turnage, Watt, Mr. President.

Total 49

Noes: None.

Total 0

Excused: Warden.

Total 1

Absent or not voting: None.

Total 0

House Joint Resolution No. 27 was concurred in by the following vote:

Ayes: Aber, Bergren, Boylan, Brown, Devine, Dover, Dunkle, Etchart, Flynn, Galt, Goodover, Graham, Hager, Hazebaker, Healy, Himsl, Jergeson, Kolstad, Lee, Lockrem, Lowe, McCallum, Manley, Manning, Mathers, Mehrens, Murphy, Murray, Nelson, Norman, Peterson, Rasmussen, Regan, Roberts, Roskie, E. Smith, R. Smith, Stephens, Story, Thiessen, Thomas, Towe, Turnage, Warden, Mr. President.

Total 45

Noes: Blaylock, Fasbender, Lensink, Olson, Watt.

Senate Amendments to House Bill No. 535

Senate Amendments to House Bill No. 591

Senate Amendments to House Bill No. 656

Concurred in this day on third reading by the House:

Senate Amendments to House Bill No. 43

Senate Amendments to House Bill No. 77

Senate Amendments to House Bill No. 96

Senate Amendments to House Bill No. 113

Senate Amendments to House Bill No. 116

Senate Amendments to House Bill No. 178

Senate Amendments to House Bill No. 226

Senate Amendments to House Bill No. 301

Senate Amendments to House Bill No. 379

Senate Amendments to House Bill No. 414

Senate Amendments to House Bill No. 476

Senate Amendments to House Bill No. 516

Senate Amendments to House Bill No. 526

Senate Amendments to House Bill No. 607

Senate Amendments to House Bill No. 685

Senate Amendments to House Bill No. 757

Senate Amendments to House Bill No. 759

Senate Amendments to House Bill No. 763

Senate Amendments to House Bill No. 815

Senate Amendments to House Joint Resolution No. 60

The House, on Third Reading this day, adopted the Governor's Amendments to House Bill No. 196, the amendments and the House Bill are herewith transmitted to the Senate for concurrence:

House Bill No. 196, introduced by Fagg

Concurred in and returned to the Senate:

Senate Bill No. 33, introduced by Blaylock

Senate Bill No. 34, introduced by Hazelbaker

MOTIONS

Upon motion of Senator Stephens, duly carried, that House Bill No. 694 be taken from the Committee on Bills and be rereferred to the Committee on Public Health, Welfare, and Safety.

Senator Kolstad excused.

Senator Thiessen moved that the Senate reconsider its action taken on the adoption of an Adverse Committee Report on House Bill No. 238 this

(Amendment opposed by Blaylock, Boylan, Fasbender, Flynn, Graham, Hazelbaker, Healy, Jergeson, Lee, Lowe, McOmber, Manning, Mehrens, Murphy, Norman, Peterson, Regan, Roberts, Towe, Warden.)

And, as so amended, be concurred in. Unanimously concurred in.

That House Bill No. 634 be concurred in. Unanimously concurred in.

That House Bill No. 694 be indefinitely postponed. Opposed by Blaylock, Brown, Fasbender, Flynn, Hager, Lee, Lowe, McOmber, Manning, Murphy, Norman, Regan, Roberts, Towe, Warden, Watt.

That consideration of House Joint Resolution No. 65 be passed. Unanimously passed.

That House Amendments to Senate Bill No. 165 be concurred in. Unanimously concurred in.

That House Amendments to Senate Bill No. 179 be concurred in. Unanimously concurred in.

That the Joint Conference Committee Report No. 2 on Senate Amendments to House Bill No. 126 be concurred in. Unanimously concurred in.

That House Bill No. 299 be amended as follows:

1. Amend page 3, section 1, line 13.

Following: "(c)"

Strike: "Except"

Insert: "Within the boundaries of a national forest, except"

(Amendment opposed by Blaylock, Himsl, Norman, Regan, Story, Watt.)

And, as so amended, be concurred in. Opposed by Blaylock, Brown, Etchart, Galt, Himsl, Kolstad, McCallum, Manley, Olson, Regan, E. Smith, Story, Thomas, Watt.

That the Committee rise and report. (Himsl, Chairman):

Upon motion of Senator Himsl, duly carried, the foregoing Report of the Committee of the Whole was adopted.

At the request of the President, and without objection, the Senate reverted to Order of Business No. 2.

REPORTS OF STANDING COMMITTEES

The Senate will please take note that the President will sign the following bills at the hour of adjournment, March 31, 1977:

SB 47, SB 58, SB 131, SB 231, SB 254, SB 270, SB 277, SB 290, SB 301, SB 327, SB 358, SB 366, HB 96, HB 113, HB 178, HB 226, HB 301, HB 516, HB 526, HB 551, HB 607, HB 669, HB 685, HB 757, HB 763, HB 815, HB 43, HB 71, HB 73, HB 77, HB 236, HB 260, HB 414, HB 583, HB 677, SJR 20, SJR 41 SR 4, HJR 3, HJR 45, HJR 72, HJR 73

W. GORDON McOMBER
President

I have examined Senate Bill No. 47 introduced by me and find the same to be correct. (Roberts)

I have examined Senate Bill No. 58 introduced by me and find the same to be correct. (Rasmussen)

SEVENTY-FIFTH LEGISLATIVE DAY

Helena, Montana
April 1, 1977

Senate Chambers
Capitol Building

Senate convened at 1:30 p.m., President McOmber presiding. Invocation by the Chaplain. Pledge of Allegiance to the Flag.

Roll call. All members present except Lockrem, Galt, Hager, excused. Quorum present.

REPORTS OF STANDING COMMITTEES

BILLS (Warden, Chairman):

Signed by the President of the Senate and Speaker of the House, at the hour of 10:05 a.m., and delivered to the Governor for his approval - Senate Bill Nos. 4, 17, 128, 138, 178, 181, 207, 219, 241, 258, 261, 287, 300, 316, 326, 393, 420. Report adopted.

The Senate will please take note that the President did, at the hour of adjournment, March 31, 1977, sign the following bills:

SB 47, SB 58, SB 131, SB 231, SB 254, SB 270, SB 277, SB 290, SB 301, SB 327, SB 358, SB 366, HB 96, HB 113, HB 178, HB 226, HB 301, HB 516, HB 526, HB 551, HB 607, HB 669, HB 685, HB 757, HB 763, HB 815, HB 43, HB 71, HB 73, HB 77, HB 236, HB 260, HB 414, HB 583, HB 677, SJR 20, SJR 41, HJR 3, HJR 45, HJR 72, HJR 73

W. GORDON McOMBER
President

LEGISLATIVE ADMINISTRATION (Kolstad, Chairman):

SR 7, be adopted. Report adopted.

PUBLIC HEALTH, WELFARE, AND SAFETY (Stephens, Chairman):

HB 455 be concurred in. Report adopted.

HB 658 be concurred in. Report adopted.

BUSINESS AND INDUSTRY (Hazelbaker, Chairman):

HJR 90 be concurred in. Report adopted.

STATE ADMINISTRATION (Towe, Chairman):

HJR 34 be concurred in. Report adopted.

JUDICIARY (Turnage, Chairman):

HB 374 be not concurred in.

Thereupon, the Adverse Committee Report was adopted by the following roll call vote:

Ayes: Aber, Bergren, Blaylock, Boylan, Brown, Devine, Dover, Dunkle, Etchart, Flynn, Goodover, Graham, Hazelbaker, Healy, Himsl, Jergeson, Kolstad, Lee, Lensink, Lowe, McCallum, Manley, Mathers, Murphy, Murray, Nelson, Norman, Olson, Peterson, Regan, E. Smith, R. Smith, Stephens, Thiessen, Thomas, Towe, Turnage, Warden, Watt, Mr. President.

Total 40

Noes: None.

Total 0

Excused: Galt, Hager, Lockrem.

JUDICIARY COMMITTEE

February 18, 1977

The regular meeting of the House Judiciary Committee was called to order by Chairman Scully at 7:30 a.m. in room 436 of the Capitol Building, Helena, Montana on Friday. All members were present except Representative Day, excused, to carry a bill.

Scheduled for hearing were House Bills 363, 411, 455, 457, 758, 761, and 763.

The hearing opened on House Bill 758.

REPRESENTATIVE SOUTH, DISTRICT #51:

The bill is to avoid conflict between states in child custody proceedings, providing interstate judicial assistance in custody cases to discourage illegal schemes to gain possession of a child in contested cases. There seems to be a constitutional restriction on what the federal government can do. Eight states have adopted this law. A parent might have custody in another state. I would ask you to look very favorably on this bill. He went to give examples of cases in which the child might be the subject of illegal schemes.

The hearing closed on House Bill 758.

THE HEARING OPENED ON HOUSE BILL 363.

REPRESENTATIVE COONEY, DISTRICT #83:

This bill would give the victim the right to decide if she would like to have her tests video-taped. The equipment is available right now. The concept is not new although it might be in Montana. The testimony of the victim and at the request of the victim, with the concurrence of the prosecuting attorney, may be recorded by means of videotape for presentation at the trial, and would be received as evidence.

TOM DOWLING, MONTANA COUNTY ATTORNEYS ASSOCIATION:

I think the bill has a couple of problems in language. He went on to talk about cases he was familiar with, such as the five year old victim of a sexual assault. This is another tool to bring these people to justice. However, the bill does need some cleaning up.

RICK CRONEN, MONTANA COUNTY ATTORNEY ASSOCIATION:

I would hope the committee would give this favorable attention. I think this might encourage further reporting. We feel that this is an option that should be available. I would like to ask that you support this bill.

REPRESENTATIVE COONEY:

I think this is a needed piece of legislation.

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SHIRLEY HUDSON, RAPE AWARENESS PROGRAM:

We support HB 363. Sexual intercourse without consent is an act that leaves the victim with many fears, emotional problems and guilt, many of these don't become apparent and are kept well-hidden by the victim, sometimes for years. If the victim can video-tape the testimony shortly after the attack, she can begin recovering and return to a healthy way of life, and not be traumatized all over again by the trial.

All the myths and prejudices about sexual intercourse without consent leaves the victim with the need to defend her/him self and her/his character, which again brings up all the fears and guilts which has or could have been healing. The fear that people are looking at them because of this attack is reinforced and worsened by the trial which anyone can attend. We feel the video-taping helps lessen the trauma for the victim.

REPRESENTATIVE KEYSER asked several questions about the testimony, how it would be presented.

REPRESENTATIVE TEAGUE asked why not use just a tape, why the video.

MR. DOWLING:

I think you would have to have some kind of physical appearance. That is why we could use the taping.

After some further discussion the hearing closed on House Bill 363.

THE HEARING OPENED ON HOUSE BILL 455.

REPRESENTATIVE MELOY, DISTRICT #29:

This bill corrects an error. When money or property does not vest in the person who is supposed to take it, then it escheats. All this bill does is reinstate the notice.

MIKE McGRATH, ATTORNEY GENERALS OFFICE:

This is a very light application. This would only apply to other countries that would not have a reciprocity agreement with the United States.

I would like to suggest an amendment on line 14, strike: "under", insert: "because of".

After a short question and answer period the hearing closed on HB 455.

THE HEARING OPENED ON HOUSE BILL #411.

REPRESENTATIVE DUSSAULT, DISTRICT #95:

What we have attempted to do is add some new language to title 38. Chapter 12 sets out a method of treatment. This bill would permit the court to provide treatment for developmentally disabled persons

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or the seriously mentally ill. These are people who lack fitness to be tried for a criminal offense under the procedure for treatment of these persons. If the court determines that the defendant lacks fitness to proceed, the proceeding against him shall be suspended, and the court shall commit him to the custody of Warm Springs State Hospital, or other appropriate institution until such time as the unfitness endures.

NICK ROTERING, CHIEF COUNSEL, DEPARTMENT OF INSTITUTIONS:

I think they are amending the language section of the court. That should be handled differently. This bill amends 95-506 and should amend 95-508 instead. I think it is a good idea to allow the judge to try to work with this individual. I recommend that it be amended.

There were no opponents.

REPRESENTATIVE DUSSAULT:

I will look at 95-508 and see what the impact is and prepare some amendments. She mentioned that there was a typographical error on page 3, line 6, trail should be trial, and that this should be amended to correct it.

REPRESENTATIVE SCULLY:

I don't see any practical effect that will be gained by this amendment to correct the bill, all I see is difficulties.

REPRESENTATIVE DUSSAULT:

We are talking about the developmentally disabled and not the mentally ill. The intent is not to take them out of the institutional environment but to assure that they are receiving treatment. Warm Springs is an inappropriate place. They should be at Boulder. They should be treated under the civil code.

REPRESENTATIVE SCULLY:

Maybe we could make it very clear that we are dealing with the developmentally disabled and not the mentally ill.

REPRESENTATIVE MELOY:

I have a possible amendment, to insert the language, "as long as the fitness endures". There was discussion about this.

I want to strike chapter 13, I don't want to confuse the issue.

After much general discussion, the hearing closed on House Bill 411.

THE HEARING OPENED ON HOUSE BILL #761.

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REPRESENTATIVE HARRINGTON, DISTRICT #88:

This was proposed by the State Bar of Montana. It is a pre-paid legal plan for nonprofit corporations and to regulate the activities of such corporations. Page 3 is limited to nonprofit corporations and on line 15, a legal services corporation which complies with this act is not considered as being engaged in the business of insurance and is not subject to the laws regarding insurers.

LES LOBLE, STATE BAR OF MONTANA:

No legal services corporation may enter into an exclusive agency or management contract unless the contract is first filed with and approved by the commissioner. On page 5, a corporation, before issuing any membership shall have contracts with a sufficient number of attorneys to enable the fulfillment of its contractual obligations to its members. A legal services corporation may not practice law in any manner. He went on to discuss membership contracts.

The insurance commissioner has the right to examine the fitness of any corporation. All forms of membership contracts must be filed with the commissioner within 30 days. This permits a kind of flexibility. This is exactly the way Blue Shield and Blue Cross plans are set up. He went on to discuss the exemptions and grievance, malpractice insurance in a minimum amount, violations, and provisions for dissolution, the cease and desist order, etc.

OPPONENT, JIM MURRAY, AFL-CIO:

We are going to try to work out some kind of compromise of the problems with the bill. We are afraid that this may conflict with in-house attorneys. We think the law should allow for both open and closed panels. We believe in the pre-paid legal services concept. He went on to explain some of the problems that might be created.

REPRESENTATIVE HARRINGTON:

I just hope this can be worked out, the problems between these two groups.

REPRESENTATIVE HARRINGTON and MR. MURRAY agreed to try to work out some amendments that would be satisfactory to both parties and present them to the committee.

REPRESENTATIVE EUDAILY:

Would it be assumed that the corporation would set up the pay that the attorney would get.

LES LOBLE:

I think you could have many kinds of contracts. It could be a percentage. It would be up to the group.

REPRESENTATIVE EUDAILY:

Would the group write their own plans.

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MR. LOBLE:

If standard plans would work that is fine but they may want to write their own.

After general questions and answers the hearing closed on HB 761.

THE HEARING OPENED ON HOUSE BILL #763:

REPRESENTATIVE RAMIREZ, DISTRICT #64:

We have had several supreme court judgments that have provided for some of these problems. There are no procedural safeguards for the debtor. This bill is designed to eliminate all of the problem with the present attachment statute. When a writ has been issued upon the showing, the defendant may challenge the seizure of the property at a hearing before the court to be held within 3 days after the seizure. There has to be a notice given and a chance for a hearing before the property can be attached. He felt the provision for notice should be clarified and would present an amendment to the committee.

DAVE COGLEY:

We worried if Montana attachment statutes are constitutional. There should be a judge that issues the writ. All this bill is doing is say that the judge issues the writ. (attachment statute research)

MIKE McGRATH, ATTORNEY GENERALS OFFICE:

I wonder whether the wage garnishment is constitutional. He went on to talk of this and the comment was made that the current statute is unconstitutional. There was further discussion.

REPRESENTATIVE SCULLY:

Is this the same procedure as in the claim and delivery section?

MR. COGLEY:

Claim and delivery is property that the complaining party has an interest in. This bill is for immediate property.

REPRESENTATIVE TEAGUE:

What is the percentage of the garnishment amount?

MR. McGRATH:

Only 3 times the minimum allowed wage.

REPRESENTATIVE SCULLY:

It looks like you are making it permissive for the defendant to challenge it in 3 days.

There followed a discussion about the method of giving notice. We don't say what the notice is for, was one comment made.

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REPRESENTATIVE SCULLY:

We are talking about two notices. There was a great deal of pro and con discussion about this.

The hearing closed on House Bill #763.

THE HEARING OPENED ON HOUSE BILL 457:

REPRESENTATIVE VINCENT, DISTRICT #78:

This bill is to clear up the language and clarify the actual duties of the county attorney and the attorney general. If an action is prosecuted by the county attorney alone, he shall notify the department as to the nature of the action and the parties to the action within 30 days of the filing of the action. The county attorney shall make a report to the department within 30 days of the final disposition of the matter.

HAROLD PITTS:

I am opposing because of the personal interest I have in the consumer act. I was the director of the Department of Business Regulation. We took the act and put it into effect and it has worked. I think this would be a mistake. I don't think this would be in the best interest of the consumer. He went on to talk about a book published by this department, "BE AN OPEN-EYED CONSUMER", to educate people to be a better consumer. I would appreciate your killing this bill.

REPRESENTATIVE TEAGUE made several comments about the book and praised the content and said it was an excellent book.

REPRESENTATIVE SCULLY asked Mr. Pitts. Who is the attorney for the state of Montana?

MR. PITTS:

I presume it would be the attorney general.

MR. McGRATH, ATTORNEY GENERALS OFFICE:

This is our bill. We are in support of it. We like it. We are not interested in taking over the Department of Business Regulation. The bill will just clarify the powers of the county attorney. All this does is say that the supervisor also has the same authority as the county attorneys. We have no desire to usurp the authority of the department. This bill would avoid unnecessary litigation as to his authority.

REPRESENTATIVE SCULLY:

This bill will be one of many. I have had cases, such as smart-pak, in which no one has coordinated the investigation. Each individual county would handle their own small portion. He explained the case and how it was a fraudulent scheme and how it took a great deal of

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cooperation between the counties and the attorney general to stop it. There is no way that a county attorney can go across state lines. I think this is a very proper bill. Had this bill been in effect about a year ago, we would not have had so much trouble in stopping the smart-pak scheme. I would really support the legislation.

DICK DISNEY, CONSUMER AFFAIRS DIVISION, DEPT. OF BUSINESS REGULATION:
I think the title is simply misleading. In 25-4116, it is legislating to clarify something that doesn't exist. We fear it will create another duplication of effort. He also mentioned the coordination of the smart-pak operation, and how his department had been instrumental in bringing it to a head.

REPRESENTATIVE VINCENT:

I think the issue is consumer protection. It is an effort to clarify the role for the prosecution of fraud.

REPRESENTATIVE SCULLY asked Mr. Disney about the role of the department in the smart-pak operation.

MR. DISNEY:

He explained about the sales force and a Mr. Duncan, how they had had many telephone calls from people and that they had filed the investigative demand. He went on in some detail how they had conducted the investigation with the help of various county attorneys.

REPRESENTATIVE SCULLY asked Mr. Disney how many cases of criminal prosecution his department had handled.

MR. DISNEY:

We do not have criminal authority. We head up the consumer protection division and have set up a consumer cooperative effort in many states. I would like to point out the fact that I have seen in larger states there are separate groups going their own way. I will repeat the fact that you are duplicating an effort.

MR. McGRATH:

We are only interested in criminal prosecution. We feel that we need the authority to go ahead with these investigations. I think you might get objections from the county attorneys office.

REPRESENTATIVE ROTH:

It seems to me that the consumer protection people are doing a good job. You already have authority over criminal activity.

MR. McGRATH:

We do not have the authority as set forth in the statutes, it is merely presumed. We would like to have it set forth in the law. We don't

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want to have to fight in court of who has the authority.

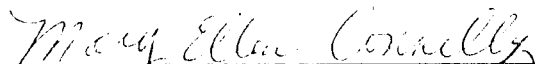
REPRESENTATIVE COURTNEY asked Mr. Disney to state how he felt there would be a duplication of services.

MR. DISNEY said there would be duplication in the fact that the attorney general and his office would be doing the same investigating that the department of business regulation now does.

After a rather heated discussion between Mr. Disney and Representative Scully the hearing closed on House Bill 457.

The meeting adjourned at 12:05.



JOHN P. SCULLY, CHAIRMAN

Mary Ellen Connelly, Secretary

JUDICIARY COMMITTEE

EXECUTIVE SESSION

February 19, 1977

The House Judiciary Committee went into executive session at 8:30 a.m. in room 436 of the Capitol Building, Helena, Montana, on Saturday, February 19, 1977. Chairman Scully presided. All members were present.

HOUSE BILL #92:

REPRESENTATIVE DUSSAULT moved to take it off the table. The motion carried with the vote unanimous.

REPRESENTATIVE HOLMES moved "do not pass".

The motion carried with Representative Teague voting "no".

HOUSE BILL #343:

REPRESENTATIVE CONROY moved the adoption of the proposed amendments. The motion carried with the vote unanimous.

REPRESENTATIVE CONROY moved "do pass as amended".

The motion carried with Representative Dussault and Courtney voting "no". A copy of amendments is attached.

HOUSE BILL #363:

REPRESENTATIVE CONROY moved the adoption of the proposed amendments. The motion carried with the vote unanimous.

REPRESENTATIVE ROTH moved "do pass as amended".

The motion carried with the vote unanimous. (copy attached)

HOUSE BILL #455:

REPRESENTATIVE KEYSER moved the adoption of the proposed amendments. The motion carried with the vote unanimous.

REPRESENTATIVE KEYSER moved "do pass as amended".

The motion carried with the vote unanimous. (copy attached)

HOUSE BILL #411:

REPRESENTATIVE CONROY moved "do pass".

The motion carried with the vote unanimous.

HOUSE BILL #497:

REPRESENTATIVE KEYSER moved "do pass".

The motion carried with the vote unanimous.

HOUSE BILL #749:

REPRESENTATIVE RAMIREZ moved "do not pass".

The motion carried with Representatives Day and Holmes voting "no".

HOUSE BILL #738:

REPRESENTATIVE DUSSAULT moved to amend. The motion carried.

REPRESENTATIVE HOLMES moved "do pass as amended". The motion carried with the following representatives voting "no". Representatives Roth, Seifert, McLane, Ramirez, Teague and Conroy.

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HOUSE BILL #739:

The sub-committee reported on proposed amendments. The sub-committee consisted of Representatives Keyser, Seifert and Baeth. The proposed amendments will be presented to the committee at a later date.

HOUSE BILL #742:

REPRESENTATIVE RAMIREZ moved "do pass".

The motion carried with the following voting "no". Representatives Teague, Keyser, Seifert, Roth, McLane and Conroy.

HOUSE BILL #758:

REPRESENTATIVE KEYSER moved "do pass".

The motion carried with the vote unanimous.

HOUSE BILL #763:

REPRESENTATIVE RAMIREZ moved the adoption of the proposed amendments compiled by the sub-committee. The motion carried.

REPRESENTATIVE RAMIREZ moved the bill "do pass as amended".

The motion carried with the vote unanimous.

HOUSE JOINT RESOLUTION #59:

REPRESENTATIVE RAMIREZ moved "do pass".

The motion carried with the vote unanimous.

HOUSE JOINT RESOLUTION #63:

REPRESENTATIVE HOLMES presented a copy of the proposed amendments from the sub-committee and moved their adoption. The motion carried.

REPRESENTATIVE HOLMES moved "do pass as amended".

The motion carried with the vote unanimous.

HOUSE BILL #533:

REPRESENTATIVE RAMIREZ moved the adoption of the proposed amendments from the sub-committee. The motion carried.

REPRESENTATIVE KEYSER moved "do pass as amended".

The motion carried with the vote unanimous.

HOUSE JOINT RESOLUTION #23:

REPRESENTATIVE DAY reported from the water sub-committee and moved the adoption of the committee report. The motion carried with the vote unanimous.

HOUSE BILL #759:

REPRESENTATIVE DAY reported from the water sub-committee, and moved the adoption of the committee report "do pass". The motion carried with the vote unanimous.

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HOUSE BILL #374:

REPRESENTATIVE RAMIREZ presented copies of the proposed amendments and moved their adoption. The motion carried.

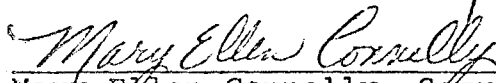
REPRESENTATIVE RAMIREZ moved "do pass as amended".

The motion carried with the following representatives voting "no".
Representatives Baeth, Keyser and Scully. (copy attached)

The meeting adjourned at 10:55 a.m. in order for the representatives to go into session at 11:00 a.m.



JOHN P. SCULLY, CHAIRMAN



Mary Ellen Connelly, Secretary

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
March 15, 1977

The meeting of this committee was called to order by Senator Turnage, Chairman, on the above date at 9:40 a.m. in Room 415 of the State Capitol Building.

ROLL CALL:

All members of the committee were present. Senator Regan was excused to attend another meeting at 10:00 a.m..

WITNESSES PRESENT TO TESTIFY:

Rep. Ramirez - District 64, Billings
George Bennett - Mountain Bell
Jim Hughes - " "
Les Loble - General Telephone of the Northwest

CONSIDERATION OF HOUSE BILL 320:

Rep. Ramirez from Billings, sponsor of the bill, said that this is the Comparative Negligence Act and explained the bill to the committee. Section 1 deals with the way a jury will handle a comparative negligence case. Section 2 deals with those situations in which a plaintiff files suit and the defendants believe there is someone else who might be liable to the plaintiff. Section 3 deals with a combination of tort defendants. It would not deprive the plaintiff from collecting all of his damages. However, the defendants have to work it out among themselves.

There were no proponents or opponents to this bill present. The committee asked questions of Rep. Ramirez. He suggested an amendment (See Ex. 1) if there was a problem with the mandatory provision. Chairman Turnage said that the committee would take it under advisement.

CONSIDERATION OF HOUSE BILL 497:

Rep. Ramirez, sponsor of this bill also, said that this bill was introduced to resolve a problem in telephone service. 94-6-304 is the theft of service statute. To violate this section the defendant must first obtain the services, then that must be done by deception or other means. It is wrong also to give a credit card to someone who you know is going to obtain the services wrongfully. A new section 2 has been added to correct this.

The first proponent to speak, George Bennett, a Helena attorney representing Mountain Bell, said that the legislature last session tried to do what this bill is doing now. They have found that those people who violate the theft of service statute can be found but cannot be prosecuted.

Jim Hughes, also representing Mountain Bell, said that there are even leaflets out now showing people how to cheat the telephone companies.

Les Loble, representing General Telephone of the Northwest, the next proponent, said that they feel that this is an excellent bill.

DISPOSITION OF HOUSE BILL 497:

Senator Warden moved that HB 497 BE CONCURRED IN. The motion carried unanimously. She volunteered to carry this bill on 2nd Reading.

CONSIDERATION OF HOUSE BILL 763:

Rep. Ramirez explained the bill and said that they are going to offer amendments to it, one of which will clearly place the burden of proof on the plaintiff. (See Ex. 2) He is sponsor of the bill.

There were no proponents or opponents present to testify.

DISPOSITION OF HOUSE BILL 763:

Sen. Towe moved to adopt the attached amendments. (See attachment #1) The motion carried unanimously. However, Senator Roberts moved the adoption of amendment # 9 of the attached amendments. That motion also carried unanimously.

Sen. Towe then moved that HB 763 as amended BE CONCURRED IN. The motion carried unanimously.

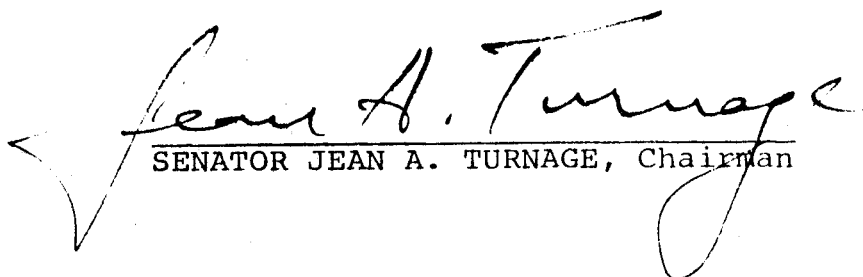
At this time, Senator Turnage was excused to attend a hearing in the House and Sen. Roberts assumed the Chair.

CONSIDERATION OF HOUSE BILLS 28 and 29:

Sen. Warden said that she does not think you can raise the drinking age to 19 when, for all other purposes, 18 year olds are adults.

Sen. Towe moved to amend HB 29 on line 17 by inserting the words "The legislature may prohibit possession and consumption of alcohol by persons under the age of 19." The motion failed. Sen. Warden abstained from voting on the amendment. Senator Lensink said that he thought the committee should hold off acting on this bill until all members were present.

There being no further business, the committee adjourned at 11:00 a.m..


SENATOR JEAN A. TURNAGE, Chairman

Respectfully report as follows. That HOUSE Bill No. 793, The
Third Reading Bill, be amended as follows:

1. Amend page 2, section 2, line 20.

Following: "defendant"

Strike: "is"

2. Amend page 2, section 2, line 21.

Following: "(a)"

Insert: "is"

3. Amend page 2, section 2, line 23.

Following: "debt;"

Strike: "or"

4. Amend page 2, section 2, line 24.

Following: "(b)"

Insert: "is"

5. Amend page 2, section 2, line 25.

Following: line 25

~~XXXXXX~~ Insert: "(c) has the power to dispose of or conceal or remove
from the state property which would be subject to execution; or
(d) is likely to suffer liens or encumbrances on his property
which would be subject to execution;"

XXXXXXXXXX

6. Amend page 3, section 3, line 16.
Following: "defendant"
Strike: "recovered"
Insert: "recovers"
7. Amend page 4, section 4, line 20.
Following: "(a)"
Insert: "in the case of real property, of his right to attachment
and the necessity for seizure;
(b) in the case of personal property;
(i)"
8. Amend page 4, section 4, line 20.
Following: "to"
Strike: "possession"
Insert: "attachment"
9. Amend page 5, section 4, line 1.
Following: line 25 on page 4
Strike: "(b)"
Insert: "(ii) of his right to attachment and the necessity for seizure
and"
10. Amend page 5, section 5, line 10.
Following: "issued"
Insert: "upon real property or"
Following: "(b)"
Insert: "(ii)"
11. Amend page 5, section 5, line 23.
Following: "(a)"
Strike: "there is no question of fact to be resolved and that"
12. Amend page 6, section 5, line 1.
Following: "(b)"
Strike: "there is no"
Insert: "the plaintiff cannot establish by a preponderance of the
evidence the"
13. Amend page 6, section 6, line 5.
Following: "attachment"
Strike: "shall"
Insert: "may"
14. Amend page 6, section 6, line 7.
Following: line 6
Strike: "must"
Insert: "may"

JUDICIARY COMMITTEE

Date 3/15/17

[illegible]

(Ex. 1)

PROPOSED AMENDMENTS TO HOUSE BILL NO. 320

March 15, 1977

Representative Ramirez

1. Amend page 1, section 1, line 21.

Following: "shall"

Insert: "be required when requested by any party to"

2. Amend page 2, section 1, lines 1 and 2.

Following: "court." on line 1

Strike: lines 1 and 2 in their entirety

JR:1k1

(Ex. 2)

AMEND H.B. 763

THIRD READING

Amend third reading:

1. Amend page 2, section 2, line 20
Following: "defendant"
Strike: "is"
2. Amend page 2, section 2, line 21
Following: "(a)"
Insert: "is"
3. Amend page 2, section 2, line 23
Following: "debt;"
Strike: "or"
4. Amend page 2, section 2, line 24
Following: "(6)"
Insert: "is"
5. Amend page 2, section 2, line 25
Following: "execution;"
Insert: "or
(c) has the power to dispose of or conceal or remove from the
state property which would be subject to execution;"
6. Amend page 4, section 4, line 20
Following: "to"
Strike: "possession"
Insert: "attachment"
- ✓ 7. Amend page 5, section 5, line 23
Following: "(a)"
Strike: "there is no question of fact to be resolved and that"
- ✓ 8. Amend page 6, section 5, line 1
Following: "(b)"
Strike: "there is no"
Insert: "the plaintiff cannot establish by a preponderance
of the evidence the"
- ✓ 9. Amend page 6, section 6, line 7
Following: line 6
Strike: "must"
Insert: "may"

DATE 5-15-77

COMMITTEE ON

VISITORS' REGISTER

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